

Ed Watson's Opinion (Dep. Atty. Gen.)
March 21, 1984

Subj: Ownership of Ditch R/W
crossing Kapaa Hoistds., 1st Series

Opinion: State is fee owner of
Ditch R/W

KAYAKI FILE CARTON 7-A
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March 21, 1984

MEMORANDUM

TO: Susumu Ono, Chairperson
Board of Land and Natural Resources

FROM: Edwin P. Watson
Deputy Attorney General

SUBJECT: Ownership of Ditch Rights-of-Way Crossing
Lots 62, 63 and 73 of the Kapaa Homesteads,
First Series at Kawaihau, Kauai

This is in response to your request for an opinion as to whether or not the reservation "Excepting and reserving, however, a right of way 15 feet wide for the ditch, center line of which is the centerline of the ditch" contained in the land patent grants (Land Patent Grant Nos. 7023, 7353 and S-10357) in which no area is excluded from the gross area for the ditch rights of way, vests the fee ownership of said rights of way with the State of Hawaii or the Patentee.

FACTS

Mr. Clyde T. Kodani, President of Kodani & Associates, Inc., submitted and requested approval of "new" metes and bounds descriptions for the above-mentioned lots.

Mr. Kodani's request was a result of a ruling by the Kauai County Attorney that Lot 62 is, in fact, two (2) lots (i.e. Parcels 30 and 32 of Tax Map 4-6-06), that Lot 63 is seven (7) lots (i.e. Parcels 25, 26, 27, 28, 29, 38 and 39 of Tax Map 4-6-08) and that Lot 73 is two (2) lots (i.e. Parcels 10 and 11 of Tax Map 4-6-06).

Along with the "new" metes and bounds description, Mr. Kodani also submitted for Land Department approval preliminary maps showing the perimeter description of each of the above lots

and the location of the 15-ft. wide ditch rights of way. In essence, the owner is willing to concede the ownership of the ditch rights of way to the State by requesting Land Department approval to said metes and bounds description and map.

DISCUSSION

Upon receipt of the metes and bounds description and map, the Land Department forwarded said materials to the Survey Division, Department of Accounting and General Services, for review.

In its report to the Department of Land and Natural Resources by letter dated August 18, 1983, the State Land Surveyor was of the opinion that for this Kapaa Homesteads Subdivision, the Territory of Hawaii intended to retain fee title to the ditches for the following reasons:

1. The "excepting and reserving" clause excluding the ditch rights of way were included in the descriptions of the Kapaa Homesteads, First Series Subdivision, which were subsequently used when the Land Patent Grants were issued by the Territory of Hawaii.
2. The Territory of Hawaii asserted ownership of the ditches by granting general lease licenses for use of the ditches.
3. Tax Maps 4-6-06 and 4-6-08 show the ditch as separate parcels under the ownership of the State of Hawaii.
4. The ownership of the ditch by the Territory of Hawaii has never been challenged by the owners of Grants 7353 and 10,357.

CONCLUSION

In reply to your request for an opinion as to ownership of the ditch, we answer that upon review of all of the reference materials, including the State Land Surveyor's report dated August 18, 1983, we concur with the State Land Surveyor that the ditch referred to in Land Patent Grant Nos. 7023, 7353 and S-10357 are owned in fee by the State of Hawaii.

We concur further with the State Surveyor that since the State of Hawaii is the owner of the ditch, the Survey Division and the Applicant's surveyor should meet to resolve the following matters:

1. It would be preferable to have the boundaries of all of the newly created lots run along the bank of the ditch 7.5 feet parallel to and away from the centerline.
2. Since the original Lot 62 contained a fairly large error of closure, this would be the opportune time to adjust certain boundaries to obtain much better closures for each of the new lots.
3. The preliminary map does not indicate who prepared the map--the Registered Surveyor's stamp and signature should be placed on the map.
4. The 20-ft. roadway between Parcels 25 and 28 of Tax Map Plat 4-6-08 as calculated on said plan is 22 feet wide not 20 feet wide--this discrepancy should be resolved.



Edwin P. Watson
Deputy Attorney General

EPW:ck