

Sept 17, 2015

State of Hawaii

Department of Land and Natural Resources

Office of Conservation and Coastal Lands

P.O. Box 621

Honolulu, Hawaii 96809

Subject: **REQUEST FOR A DETERMINATION** regarding **non conforming land use** on Tax Map Key (TMK's): (3) 2-9-003: 013, 029, 060 at Wailea, South Hilo, Hawai'i

Dear Ms. Yasaka,

During the last year both I and OCCL have corresponded back and forth regarding modest non-conforming agricultural land uses that existed at the time of my purchasing the subject property in July of 2014. In those correspondences I pointed out that these modest non-conforming uses existed since around 1990-2. In those correspondences I also pointed that these properties have been previously used for sugar cane production up to around 1992. The use being agriculture on the subject parcels. It seems to me that according to HAR 13-5 this agricultural use is a non-conforming land use and such non-conforming agricultural use has existed since the property was designated to lie in the Conservation Resource zone.

The purpose of this letter is to seek a **DETERMINATION** from OCCL whether non-conforming agricultural land use on the subject parcels is allowable according to HAR 13-5. As noted earlier OCCL and I have exchanged correspondences over the last year as it regarded current existing non-conforming land uses on my property and I am comfortable with the communications from OCCL as it respects these existing modest uses. This request for a **DETERMINATION** is more as it respects the future possible lawful use of my property. A request for such a **DETERMIANTION** is provided for in HAR 13-5.....

*§13-5-30 Permits, generally. (a) Land uses requiring comprehensive review by the board are processed as board permits, management plans, or comprehensive management plans, and temporary variances. Departmental permits and emergency permits are processed by the department and approved by the chairperson. Site plans are processed by the department and approved by the chairperson or a designated representative. **If there is any question regarding the type of permit required for a land use, an applicant may write to the department to seek a determination on the type of permit needed for a particular action.***

While in the past I have applied for SPA's for fruit trees and a garden (both seeming agricultural uses) on my property I did this believing that this was required by HAR 13-5. However today when I read HAR 13-5-7 it seems to me that I can use most of

my property, which portions were formerly used for agricultural use, to expand my fruit tree orchard and my gardening activities and perhaps even general agricultural uses without a SPA or CDUP as **non-conforming agricultural land use** and that such use would be lawful provided for in HAR 13-5. While my property is comprised of some 4.6 acres the area of my property which was formerly used for agriculture comprises 3.2 acres (ref. enclosed documents F31B field survey map and John Cross letter Sept 15, 2015). There exists a wooded gulch area on the North end of lot 060 that was never farmed of approx. .6 acres.

§13-5-7 Nonconforming uses and structures. (a) This chapter shall not prohibit the continuance, or repair and maintenance, of nonconforming land uses and structures as defined in this chapter.

"Nonconforming use" means the lawful use of any building, premises, or land for any trade, industry, residence, or other purposes which is the same as and no greater than that established prior to October 1, 1964, or prior to the inclusion of the building, premises, or land within the conservation district.

§183C-5 Nonconforming uses.

(a) Neither this chapter nor any rules adopted here under shall prohibit the continuance of the lawful use of any building, premises, or land for any trade, industrial, residential, or other purpose for which the building, premises, or land was used on October 1, 1964, or at the time any rule adopted under authority of this part takes effect. All such existing uses shall be nonconforming uses. Any land identified as a kuleana may be put to those uses which were historically, customarily, and actually found on the particular lot including, if applicable, the construction of a single family residence. Any structures may be subject to conditions to ensure they are consistent with the surrounding environment. [L 1994, c 270, pt of §1]

I do realize that HAR 13-5 requires the burden of proof would lie on me to prove the former agricultural use and its area but I have good evidence of that from the previous property owner who purchased the property from the sugar cane company around 1990-2. This use was also documented in the 2008 FONSI document that can be found at.....

http://oehc.doh.hawaii.gov/Shared%20Documents/EA_and_EIS_Online_Library/Hawaii/2000s/2008-02-08-HA-FEA-McCully-Residence.pdf

I am also enclosing at the end of this letter several photographs of survey and areal pictures that I have archived that show that my 3 TMK parcels were utilized for agricultural production for over 100 years.

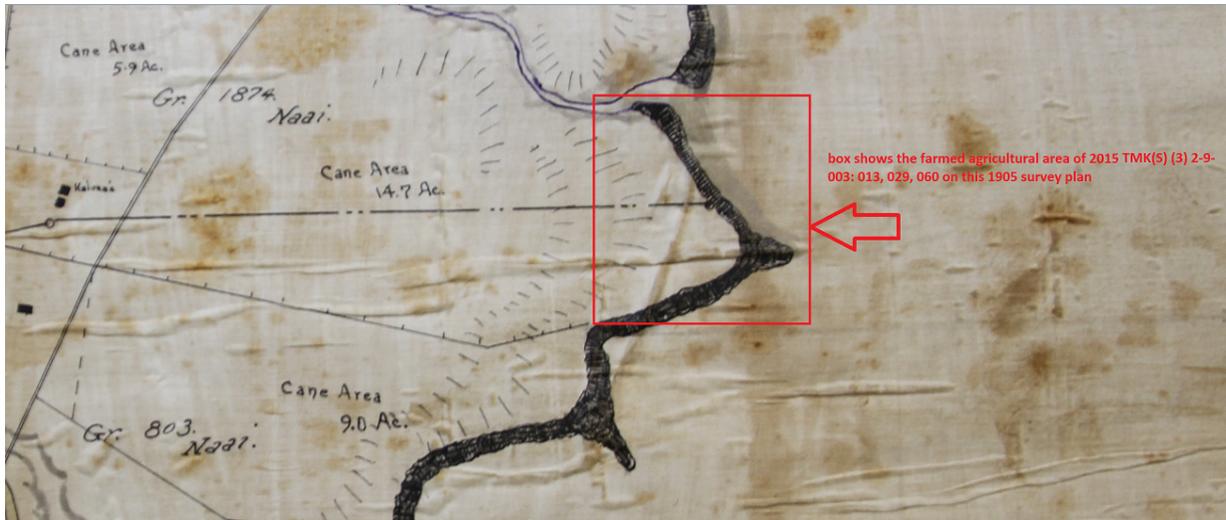
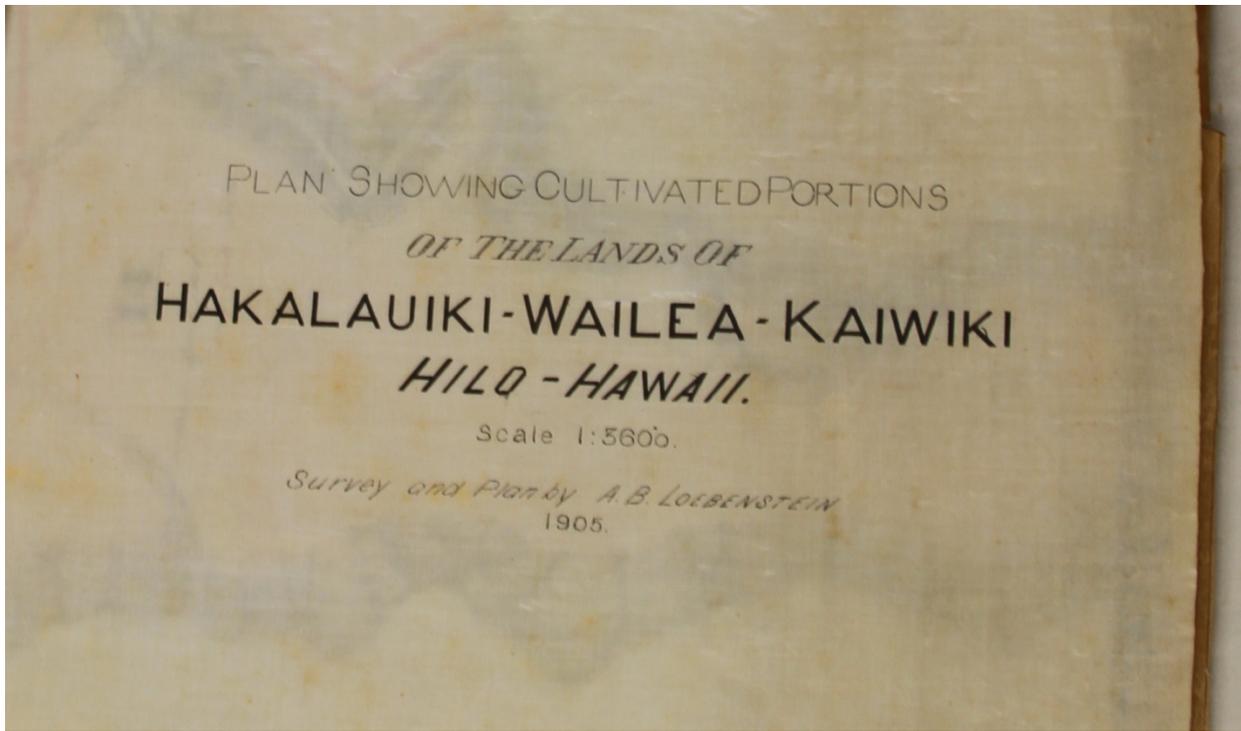
The **DETERMINATION** that I request from OCCL is whether my use of my property for agricultural use requires a CDUP or SPA or whether this evidence of past non-conforming agricultural use is sufficient to allow me non-conforming agricultural use according to HAR 13-5 of up to 3.2 acres of my 4.6 acres of land (excluding the gulch portion on lot 060 and the narrow treed strip along the top of the ocean pali on all 3 lots) permitted on my property according to HAR 13-5? To be clear I do not intend to utilize my property in an illegal way. As OCCL's capacity as the administrative/enforcement department is the **determining** body for what evidence is sufficient in order to establish my lawful use of my property I am asking for a **DETERMINATION** whether this evidence provided herein is sufficient?

I have spoken to a representative of the former sugar cane company that sold this property in 1992 to the previous owner who subsequently sold it to me in 2014. This representative asserted to me that he had assisted another property owner, that the sugar cane company had similarly sold property to, in successfully defending their continued use of that property for non-conforming agricultural use which, at the time, was being opposed by OCCL.

Please be clear in your response. Also please clearly identify in your response that it is a **DETERMINATION**. I am respectful of the law and I will not use my property for any use that is not permitted in law.

Respectfully submitted by,

Ken Church



1905 survey map of agricultural use land with red box shown area of TMK's 3 2-9-003: 029, 060 (2015).

These portions are of a survey document that is on file at the C. Brewer & Co. Ltd. Office (Edmund C. Olson Trust No. 2) located in Papaikou, Hawaii.



C. Brewer & Co. Ltd. Office (Edmund C. Olson Trust No. 2) located in Papaikou, Hawaii.

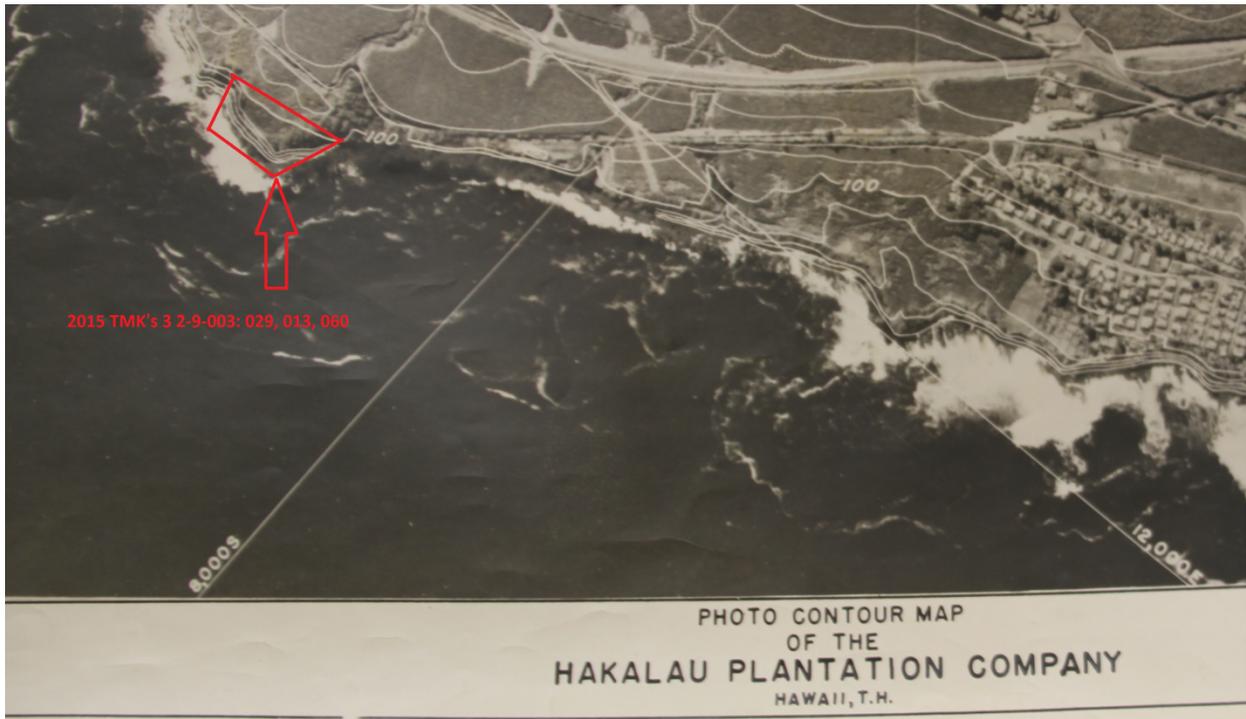


Picture 1 of 4 following herein. 1953 survey map showing area of TMK's 3 2-9-003: 029, 060 (2015).

These portions are of a survey document that is on file at the C. Brewer & Co. Ltd. Office (Edmund C. Olson Trust No. 2) located in Papaikou, Hawaii.



Picture 3 of 4 following herein. 1953 survey map legend showing the date of the 1953 picture of agricultural use land TMK's 3 2-9-003: 029, 060 (2015). These portions are of a survey document that is on file at the C. Brewer & Co. Ltd. Office (Edmund C. Olson Trust No. 2) located in Papaikou, Hawaii.



Picture 4 of 4. 1953 survey map of agricultural use land with red box showing area of TMK's 3 2-9-003: 029, 060 (2015).

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