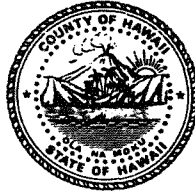


Stephen K. Yamashiro
Mayor



Virginia Goldstein
Director

Russell Kokubun
Deputy Director

August 3, 2000

County of Hawaii

PLANNING DEPARTMENT

25 Aupuni Street, Room 109 • Hilo, Hawaii 96720-4252
(808) 961-8288 • Fax (808) 961-8742

Mr. Wallace H. Gallup, Jr.
Attorney at Law
Lanihau Professional Center
75-5591 Palani Road, Suite 3007
Kailua-Kona, Hawaii 96740

Dear Mr. Gallup:

Five Additional Farm Dwelling Agreements
Applicant: KONA LANI FARM, A HAWAII GENERAL PARTNERSHIP
Owner: YASUHIRO HIRAYAMA
Tax Map Key: 7-9-003:007

Pursuant to authority conferred to the Planning Director in Ordinance 96-160, Chapter 25, Article 5, Division 7, Section 25-5-77 of the Zoning Code and Planning Department Rule 13, Farm Dwellings, we have reviewed your request for five additional farm dwellings on the subject property. Your submittal included the following information:

- a. Notarized affidavits that the additional dwellings shall be used for farm-related purposes in the form of the proposed Additional Farm Dwelling Agreements.
- b. Name and address of the landowner or lessee, if the latter has a lease on the building site with a term exceeding one year from the date of the farm dwelling agreement.
- c. Written authorization of the landowner.
- d. A farm plan of the applicant's continual agricultural productivity or farming operation within the County. The plan shows how the farm dwellings will be utilized for engagement in agricultural productivity or farming operation.
- e. The Real Property Tax Clearance form certified on May 5, 2000, that the owner of record has paid all property taxes up to and including the June 30, 2000 payment.

007652

3 2000

Findings:

1. In Chapter 205, Hawaii Revised Statutes, the State Land Use Law does not authorize residential dwellings as a permitted use in the State Land Use Agricultural district unless the dwelling is related to an agricultural activity or is a farm dwelling. **A farm dwelling**; as defined in Section 205-4.5, Chapter 205, HRS, **means a single family dwelling located on and used in connection with a farm, including clusters of single farm dwellings permitted within agricultural parks developed by the State, or where agricultural activity provides income to the family occupying the dwelling.**
2. The Farm Plan and the agreements to use the dwellings for agricultural or farm-related activity on the building site demonstrate that there is agricultural activity and that income is being/will be taxed.
3. In addition, the following agencies have submitted their comments as stated below:
 - a. The Department of Health Memorandum dated May 17, 2000, states:

"By current rules, the subject lot is located in a Critical Wastewater Disposal Area. A lot size of five (5) acres or more are required for the use of a cesspool. Only one (1) cesspool would be allowed on the lot. A septic tank system will be required for the additional systems."
 - b. The Department of Finance-Real Property Tax Office Memorandum dated May 17, 2000 states:

"Comments from the appraisal section: Subject not receiving ag-use assessment for on-site use. Ag use not verified by this department. Possible odor problem from hogs to Coffee Villas Condos.

"Comments from the collection section: Status of real property taxes: Current."
 - c. The Department of Water Supply Memorandum dated July 14, 2000, states:

"We have reviewed the subject application and have the following comments.

"For your information, an existing 5/8-inch meter services this property and is adequate for only one dwelling at 600 gallons per day. This application is proposing five additional detached dwellings, so the installation (by the applicant) of a separate 1-inch meter with five units of water is required in accordance with Department regulations. Water is available from the 8-inch waterline in Mamalahoa Highway, a distance of approximately 170 feet away. Lastly, the parcel is not covered by a departmental elevation agreement.

"Therefore, the Department has no objections to the proposed application subject to the applicant understanding and accepting the following conditions based on July 11 and 14, 2000 conversations with the applicant:

- "1. Installation, by the Department of Water Supply, of a 1 ¼ -inch service lateral for a 1-inch meter with six units of water or a maximum daily use not to exceed 3,600 gallons. Removal, by the Department of Water Supply, of the existing 1-inch service connection, and cut and plugging it at the main.
- "2. Installation of a backflow preventer (reduced pressure type) by a licensed contractor on the applicant's property just after the meter(s). The installation and assembly of the backflow preventer must be inspected and approved by the Department before the water meter can be installed. The backflow preventer shall be operated and maintained by the customer. A copy of our backflow preventer handout is being forwarded to the applicant to help them understand this requirement.
- "3. Submit a completed elevation agreement since portions of the parcel are outside of our service area. For the applicant's convenience, we have attached a blank copy of the agreement and a set of instructions.
- "4. Remittance of the following charges, which are subject to change, to our Customer Service Section:
 - a. Facilities Charge \$16,875.00
(Five additional services at \$3,375.00 each)
 - b. Capital Assessment Fee 2,500.00
(Five additional services at \$500.00 each)

c.	Temporary Deposit for Service Lateral	<u>1,400.00</u>
	Installation and cut and plugging of existing 1-inch service lateral	
	Total (Subject to Change)	\$20,775.00

- "5. Execution of a *Policy and Conditions of Water Service* form since the parcel does not front our waterline and is considered *out of bounds*. In addition, since Hooper Road must be crossed to get to the subject parcel, completed County of Hawaii *Conditional Permit* and *Permit to Work Within the County Right-of Way*, which are available from the Department of Public Works, must be presented at the same time. The applicant is responsible for all elements of the private consumer line, which will run from the Department's meter on the Mamalahoa Highway to the subject parcel, a distance of approximately 170 feet.

"Should there be any questions, please contact our Water Resources and Planning Branch at 961-8665."

4. The subject parcel was issued the following building permits:
- a. Building Permit No. 916143 was issued on September 10, 1991, for the demolition and removal of three coffee shacks. This permit remains open.
 - b. Building Permit No. 005341 was issued on March 20, 2000, for the construction of a 30' by 65' greenhouse. This permit remains open.

Decision:

In view of the above, your request to construct five (5) additional farm dwellings is approved subject to the following conditions:

- 1. The five additional farm dwellings shall be used to provide shelter to only person(s) involved in the agricultural or farm-related activity on the building site.
- 2. The agreements shall run with the land and apply to all persons who may now or in the future use or occupy the additional farm dwellings.

August 3, 2000

3. These Farm Dwelling Unit Permits are subject to all other applicable rules, regulations, and requirements of the Planning Department, including but not limited to those of the Zoning Code (Chapter 25, Ordinance No. 96-106, Effective: December 7, 1996); Department of Public Works; Department of Water Supply; Fire Department; State Department of Health; and other reviewing agencies/divisions listed on the Building Permit Application.

The Planning Director has completed the appropriate portions of the five Additional Farm Dwelling Agreements. You must record these approved Additional Farm Dwelling Agreements with the State Bureau of Conveyances and/or Land Court within thirty days of receipt of this approval. In sending this document for recordation, please note the following:

1. The original and one copy of each document must be submitted for recordation.
2. A check in the amount of \$125.00 to cover the recordation fees should be made out to the State of Hawaii, Bureau of Conveyances and attached to the Agreement. Their address is as follows:

State of Hawaii
Bureau of Conveyances
P. O. Box 2867
Honolulu, HI 96803

3. Also required is a self-addressed stamped envelope to have the recorded documents returned to you.

You must submit copies of each of the recorded Additional Farm Dwelling Agreements to the Planning Director prior to approval of the building permits for the farm dwellings.

In regards to your overall plans for Kona Lani Farm, please be advised that this approval letter is only for the five additional farm dwellings and does not sanction the establishment of the visitor center and related activities described in your application. Depending on the location of the proposed visitor center, and the exact nature of the activities contemplated, you may be required to secure either a Use Permit or a Special Permit from the Planning Commission or a Change of Zone from the County Council.

Mr. Wallace H. Gallup, Jr.

Page 6

August 3, 2000

Should you have any questions or require further information, please feel free to contact Pamela Harlow of our Kona office at 327-3510.

Sincerely,



f-VIRGINIA GOLDSTEIN
Planning Director

PLH:rld

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Enclosure

xc: West Hawaii Office

AFTER RECORDATION, RETURN BY MAIL TO:

County of Hawaii Planning Department
101 Pauahi Street, Suite 3
Hilo, Hawaii 96720

TITLE OF DOCUMENT:

CANCELLATION OF ADDITIONAL FARM DWELLING AGREEMENTS

PARTIES TO DOCUMENT:

FIRST PARTY: KONA LANI FARM
PATRICK J. D'ANGELO
MICHAEL NICHOLS
SHIRLEY NICHOLS
ALFRED P. LERMA, JR.
JAMES PUTORTI
FAITH STONE

SECOND PARTY: COUNTY OF HAWAII

PROPERTY DESCRIPTION:

TMK: (3) 7-9-003:007, 070, 071, 072 & 073

CANCELLATION OF AGREEMENTS

THIS AGREEMENT made and executed this 27th day of March, 2007, by and between **KONA LANI FARM**, whose mailing address is P.O. Box 393657, Keauhou, Hawaii 96739, **PATRICK J. D'ANGELO**, whose mailing address is P.O. Box 792, Honaunau, Hawaii 96726, **MICHAEL NICHOLS and SHIRLEY NICHOLS**, whose mailing address is P.O. Box 319, Kealakekua, Hawaii 96750, **ALFRED P. LERMA, JR.**, whose mailing address is P.O. Box 880, Kealakekua, Hawaii 96750, **JAMES PUTORTI and FAITH STONE**, whose mailing address is P.O. Box 391015, Keauhou, Hawaii 96739, herein called the "First Party," and the **COUNTY OF HAWAII**, herein called the "Second Party,"

WITNESSETH

WHEREAS, on August 3, 4, 5, 6, and 7, 2000 agreements were entered into by and between the Owner of the property described as Tax Map Key 7-9-003:007 and the County whereby the Owner was authorized to construct a total of five (5) Additional Farm Dwellings on the property; and

WHEREAS, the subject area was zoned Agricultural (A-5a) by the County of Hawaii and classified Agricultural by the State Land Use Commission; and

WHEREAS, the agreement to construct said improvements was duly recorded with the State of Hawaii Bureau of Conveyances as follows:

- Dated August 3, 2000, recorded in said Bureau as Document No. 2000-112561
- Dated August 4, 2000, recorded in said Bureau as Document No. 2000-112562
- Dated August 5, 2000, recorded in said Bureau as Document No. 2000-112563
- Dated August 6, 2000, recorded in said Bureau as Document No. 2000-112564
- Dated August 7, 2000, recorded in said Bureau as Document No. 2000-112565,

and

WHEREAS, Variance Permit No. 1240 issued by the County of Hawaii Planning Department under letter dated December 12, 2001 required that "Each lot created by SUB 01-078 shall have no more than one dwelling. No Ohana dwelling or "additional farm dwelling" or second farm dwelling shall be permitted on any lot created by SUB 01-078 for the reason that the variance granted thereby is granted based on minimal increase in the number of users" of said property, and that accordingly the aforescribed Additional Farm Dwelling Agreements should

be cancelled and rendered of no further force or effect; and

WHEREAS, the property described as Tax Map Key (3) 7-9-003:007 has since been subdivided into five parcels (above TMK and new TMK's (3) 7-9-003:070, 071, 072 and 073) by subdivision number 7828 with final approval granted on July 8, 2004; and

WHEREAS, the First Party, successors to the property described as TMK (3) 7-9-003:007, 070, 071, 072 and 073, and the Second Party agree that said agreements should be cancelled as it is no longer applicable to the lots

NOW, THEREFORE, in consideration of the above recitals and the conditions and covenants contained therein, the parties agree as follows:

The County agrees that the agreement dated August 3, 2000, recorded at the State of Hawaii Bureau of Conveyances Document No. 2000-112561, between the Owner and the County is no longer applicable and that the agreement is hereby declared null and void.

The Second Party agrees that the agreement dated August 3, 2000 no longer constitutes a covenant or encumbrance running with the land as it relates to Tax Map Key (3) 7-9-003:007, 070, 071, 072 and 073.

The County agrees that the agreement dated August 4, 2000, recorded at the State of Hawaii Bureau of Conveyances Document No. 2000-112562, between the Owner and the County is no longer applicable and that the agreement is hereby declared null and void.

The Second Party agrees that the agreement dated August 4, 2000 no longer constitutes a covenant or encumbrance running with the land as it relates to Tax Map Key (3) 7-9-003:007, 070, 071, 072 and 073.

The County agrees that the agreement dated August 5, 2000, recorded at the State of Hawaii Bureau of Conveyances Document No. 2000-112563, between the Owner and the County is no longer applicable and that the agreement is hereby declared null and void.

The Second Party agrees that the agreement dated August 5, 2000 no longer constitutes a covenant or encumbrance running with the land as it relates to Tax Map Key (3) 7-9-003:007, 070, 071, 072 and 073.

The County agrees that the agreement dated August 6, 2000, recorded at the State of Hawaii Bureau of Conveyances Document No. 2000-112564, between the Owner and the County is no longer applicable and that the agreement is hereby declared null and void.

The Second Party agrees that the agreement dated August 6, 2000 no longer constitutes a covenant or encumbrance running with the land as it relates to Tax Map Key (3) 7-9-003:007, 070, 071, 072 and 073.

The County agrees that the agreement dated August 7, 2000, recorded at the State of Hawaii Bureau of Conveyances Document No. 2000-112565, between the Owner and the County is no longer applicable and that the agreement is hereby declared null and void.

The Second Party agrees that the agreement dated August 7, 2000 no longer constitutes a covenant or encumbrance running with the land as it relates to Tax Map Key (3) 7-9-003:007, 070, 071, 072 and 073.

The First Party agrees to pay for all of the necessary costs and expenditures to record this Cancellation of Agreement.

IT IS MUTUALLY AGREED BY AND BETWEEN the parties that if any additional documents are necessary that they will execute same in order that the agreements dated August 3, 4, 5, 6, and 7, 2000 no longer constitutes an encumbrance on Tax Map Key (3) 7-9-003:007, 070, 071, 072 and 073.

[REMAINDER OF THIS PAGE INTENTIONALLY LEFT BLANK]

THIS INSTRUMENT is being signed by the parties hereto on the day and year first above written.

CURRENT OWNERS:

KONA LANI FARM, a Hawaii general partnership, by its General Partners:

HIRO TRADING CORPORATION, a Hawaii corporation, General Partner:

By *Yasuhiro Hirayama*
YASUHIRO HIRAYAMA, Its president
FIRST PARTY

Machiko Tanaka
MACHIKO TANAKA, General Partner
FIRST PARTY

[Signature]
PATRICK J. D'ANGELO FIRST PARTY

MICHAEL NICHOLS FIRST PARTY

SHIRLEY NICHOLS FIRST PARTY

ALFRED P. LERMA, JR. FIRST PARTY

JAMES PUTORTI FIRST PARTY

FAITH STONE FIRST PARTY

THIS INSTRUMENT is being signed by the parties hereto on the day and year first above written.

CURRENT OWNERS:

KONA LANI FARM, a Hawaii general partnership, by its General Partners:

HIRO TRADING CORPORATION, a Hawaii corporation, General Partner:

By _____
YASUHIRO HIRAYAMA, Its president

FIRST PARTY

MACHIKO TANAKA, General Partner

FIRST PARTY

PATRICK J. D'ANGELO

FIRST PARTY

Mu a

MICHAEL NICHOLS

FIRST PARTY

Shirley Nichols

SHIRLEY NICHOLS

FIRST PARTY

ALFRED P. LERMA, JR.

FIRST PARTY

JAMES PUTORTI

FIRST PARTY

FAITH STONE

FIRST PARTY

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CURRENT OWNERS:

KONA LANI FARM, a Hawaii general partnership, by its General Partners:

HIRO TRADING CORPORATION, a Hawaii corporation, General Partner:


By _____
YASUHIRO HIRAYAMA, Its president
FIRST PARTY

MACHIKO TANAKA, General Partner
FIRST PARTY

PATRICK J. D'ANGELO
FIRST PARTY

MICHAEL NICHOLS
FIRST PARTY

SHIRLEY NICHOLS FIRST PARTY



ALFRED P. LERMA, JR. FIRST PARTY

JAMES PUTORTI FIRST PARTY

FAITH STONE FIRST PARTY

THIS INSTRUMENT is being signed by the parties hereto on the day and year first above written.

CURRENT OWNERS:

KONA LANI FARM, a Hawaii general partnership, by its General Partners:

HIRO TRADING CORPORATION, a Hawaii corporation, General Partner:

By _____
YASUHIRO HIRAYAMA, Its president
FIRST PARTY

MACHIKO TANAKA, General Partner
FIRST PARTY

PATRICK J. D'ANGELO FIRST PARTY


MICHAEL NICHOLS FIRST PARTY

SHIRLEY NICHOLS FIRST PARTY

ALFRED P. LERMA, JR. FIRST PARTY



JAMES PUTORTI FIRST PARTY



FAITH STONE FIRST PARTY

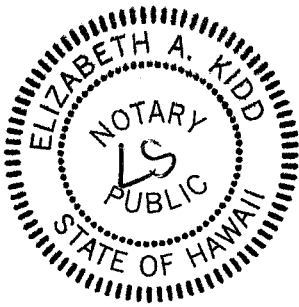
COUNTY OF HAWAII

By *Chris Yuen*
Christopher J. Yuen
Its Planning Director

SECOND PARTY

STATE OF HAWAII)
)
COUNTY OF HAWAII) SS.

On March 8, 2007, before me personally appeared **YASUHIRO HIRAYAMA** to me personally known or by satisfactory identification proven, who, being by me duly sworn or affirmed, did say that such person(s) executed the foregoing instrument as the free act and deed of such person(s), and if applicable, in the capacities shown, having been duly authorized to execute such instrument in such capacities.



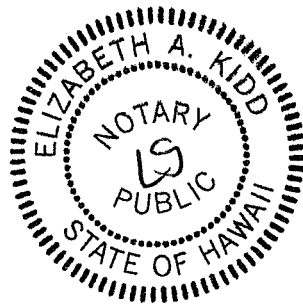
Elizabeth A. Kidd
Print Name: Elizabeth A. Kidd

NOTARY PUBLIC, State and County Aforesaid

My commission expires: 10/01/2010

STATE OF HAWAII)
)
COUNTY OF HAWAII) SS.

On March 8, 2007, before me personally appeared **MACHIKO TANAKA** to me personally known or by satisfactory identification proven, who, being by me duly sworn or affirmed, did say that such person(s) executed the foregoing instrument as the free act and deed of such person(s), and if applicable, in the capacities shown, having been duly authorized to execute such instrument in such capacities.



Elizabeth A. Kidd
Print Name: Elizabeth A. Kidd

NOTARY PUBLIC, State and County Aforesaid

My commission expires: 10/01/2010

STATE OF HAWAII)
)
COUNTY OF HAWAII) SS.

On March 6, 2007, before me personally appeared **PATRICK J. D'ANGELO**. to me personally known or by satisfactory identification proven, who, being by me duly sworn or affirmed, did say that such person(s) executed the foregoing instrument as the free act and deed of such person(s), and if applicable, in the capacities shown, having been duly authorized to execute such instrument in such capacities.

L.S.

Priscilla A. Stokes

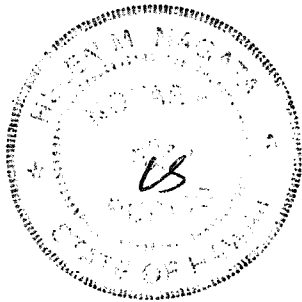
Print Name: *Priscilla A. Stokes*

NOTARY PUBLIC, State and County Aforesaid

My commission expires: *Nov. 29, 2007*

STATE OF HAWAII)
)
COUNTY OF HAWAII) SS.

On February 16, 2007, before me personally appeared **MICHAEL NICHOLS and SHIRLEY NICHOLS** to me personally known or by satisfactory identification proven, who, being by me duly sworn or affirmed, did say that such person(s) executed the foregoing instrument as the free act and deed of such person(s), and if applicable, in the capacities shown, having been duly authorized to execute such instrument in such capacities.



Helen M. Nagata
Print Name: Helen M. Nagata

NOTARY PUBLIC, State and County Aforesaid
JANUARY 4, 2009

My commission expires: _____

STATE OF HAWAII)
)
COUNTY OF HAWAII) SS.

On February 12, 2007, before me personally appeared **ALFRED P. LERMA, JR.** to me personally known or by satisfactory identification proven, who, being by me duly sworn or affirmed, did say that such person(s) executed the foregoing instrument as the free act and deed of such person(s), and if applicable, in the capacities shown, having been duly authorized to execute such instrument in such capacities.

Periella A. Shores

Print Name: PERIELLA A. SHORES

NOTARY PUBLIC, State and County Aforesaid

My commission expires: Nov. 29, 2007

L.S.

STATE OF HAWAII)
)
COUNTY OF HAWAII) SS.

On February 24, 2007, before me personally appeared **JAMES PUTORTI and FAITH STONE** to me personally known or by satisfactory identification proven, who, being by me duly sworn or affirmed, did say that such person(s) executed the foregoing instrument as the free act and deed of such person(s), and if applicable, in the capacities shown, having been duly authorized to execute such instrument in such capacities.

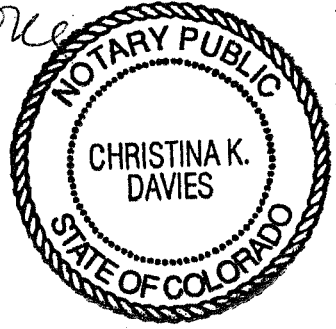
James Putorti
Faith Stone

Christina K Davies

Print Name: *Christina K Davies*

NOTARY PUBLIC, State and County Aforesaid

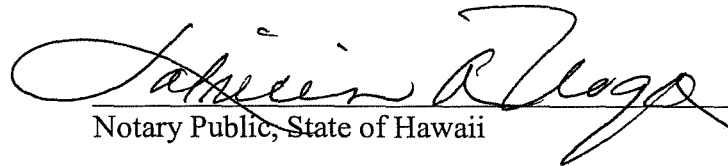
My commission expires: *12/16/2010*



STATE OF HAWAII)
) SS
COUNTY OF HAWAII)

On this 30th day of March, 2007 before me personally appeared Christopher J. Yuen, to me personally known, who, being by me duly sworn, did say that he is the Planning Director of the County of Hawaii; and that the Planning Department of the County of Hawaii has no corporate seal; and that the instrument was signed on behalf of the Planning Department of the County of Hawaii, a government agency, and said Christopher J. Yuen acknowledged the instrument to be the free act and deed of said Planning Department, County of Hawaii.

Patricia A. Koga


Notary Public, State of Hawaii

My commission expires: 07/17/10