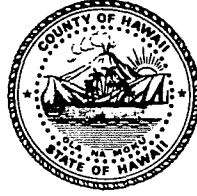


Stephen K. Yamashiro
Mayor



Virginia Goldstein
Director

Norman Olesen
Deputy Director

August 21, 2000

County of Hawaii
PLANNING DEPARTMENT

25 Aupuni Street, Room 109 • Hilo, Hawaii 96720-4252
(808) 961-8288 • Fax (808) 961-9615

James C. Clay, Esq.
75-5870 Walua Road, Suite 201
Kailua-Kona, Hawaii 96740

Dear Mr. Clay:

Additional Farm Dwelling Agreement

**Applicant: POWER FAMILY LIMITED PARTNERSHIP, RICHARD W.
POWER AND LILLIAN L. POWER, TRUSTEES**
**Owner: POWER FAMILY LIMITED PARTNERSHIP, RICHARD W.
POWER AND LILLIAN L. POWER, TRUSTEES**

Tax Map Key: 7-6-007:019

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 an additional farm dwelling on the subject property. Your submittal included the following information:

- a. A notarized affidavit that the additional dwelling shall be used for farm-related purposes in the form of the proposed Additional Farm Dwelling Agreement.
- 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 dwelling will be utilized for engagement in agricultural productivity or farming operation.
- e. The Real Property Tax Clearance form certified on May 24, 2000, that the owner of record has paid all property taxes up to and including the June 30, 2000 payment.

008722

AUG 24 2000

- f. In support, evidence of a State of Hawaii Department of Taxation's General Excise Tax License (G.E. No. 10549406) has also been submitted.

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 agreement to use the dwelling 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 June 30, 2000, states:

"The subject lot(s) is located in a Non-Critical Wastewater Disposal Area where cesspools are allowed under the current rules. More than one cesspool is allowed provided 10,000 sq. ft. per cesspool is available. Each cesspool can dispose of 1,000 gallons per day of wastewater."
 - b. The Department of Water Supply Memorandum dated July 31, 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 an additional detached dwelling, so the installation of a separate 5/8-inch meter by the applicant is required in accordance with Department regulations. Water is available from the 8-inch waterline in Hualalai which fronts the subject parcel. Lastly, the parcel is currently covered by an elevation agreement.

"Therefore, the Department has no objections to the proposed application subject to the applicant understanding and accepting the following conditions:

- "1. Installation, by the Department of Water Supply, of a second 1-inch service lateral to service a 5/8-inch meter, which shall be restricted to a maximum daily flow of 600 gallons as the existing service is.
- "2. Installation of a backflow preventer (reduced pressure type) by a licensed contractor on the applicant's property just after the meter. 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. Remittance of the following charges, which are subject to change, to our Customer Service Section:

a.	Facilities Charge (One 2 nd service at \$3,375.00 each)	\$3,375.00
b.	Capital Assessment Fee (One 2 nd service in N. Kona water system at \$500.00 each)	500.00
c.	Service Lateral Installation Charge (Install one meter on Hualalai Road, a County road)	<u>1,200.00</u>
	Total	\$5,075.00

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

- c. The Real Property Tax Office Memorandum dated June 29, 2000, states:

"Comments from the appraisal section:

Remarks: The subject property is not now receiving an Agricultural assessment for Ag-use or Dedication. Actual on-site

agricultural use has not been verified by the Real Property Tax Department."

4. The subject parcel was issued the following building permits:
 - a. Building Permit No. 39112 was issued on July 8, 1968, for a three-bedroom, 2-bath dwelling with lanai and carport. Staff was unable to locate a record of when the building permit was closed. Plumbing Permit No. 14053 was issued for this dwelling on September 5, 1969 and closed on January 23, 1970.
 - b. Building Permit No. 895908 was issued on July 26, 1989, for a two-bedroom addition, kitchen renovation and bathroom repairs on the existing dwelling. This permit was closed on October 24, 1989.

Decision:

In view of the above, your request to construct an additional farm dwelling is approved subject to the following conditions:

1. The additional farm dwelling shall be used to provide shelter to only person(s) involved in the agricultural or farm-related activity on the building site.
2. The agreement shall run with the land and apply to all persons who may now or in the future use or occupy the additional farm dwelling.
3. This Farm Dwelling Unit Permit is 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 Additional Farm Dwelling Agreement. You must record this approved Additional Farm Dwelling Agreement 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 the document must be submitted for recordation.
2. A check in the amount of \$25.00 to cover the recordation fee 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 document returned to you.

You must submit a copy of the recorded Additional Farm Dwelling Agreement to the Planning Director prior to approval of the building permit for the farm dwelling.

Please accept our sincere apologies for this tardy response to your request to construct an additional farm dwelling. Your patience is appreciated.

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

Sincerely,


VIRGINIA GOLDSTEIN
Planning Director

PLH:rld
a:\76007109\powerfamilyfdaapp.doc

Enclosure

xc: West Hawaii Office

AFTER RECORDATION, RETURN BY MAIL (X) PICK-UP ()

Law Offices of James C. Clay
75-5870 Walua Road, Ste. 201
Kailua-Kona, HI 96740

Total Number of Pages 6

TITLE OF DOCUMENT:

Additional Farm Dwelling Agreement

PARTIES TO DOCUMENT:

FIRST PARTY: POWER FAMILY LIMITED PARTNERSHIP, a Hawaii limited
partnership

SECOND PARTY: COUNTY OF HAWAII PLANNING DEPARTMENT

PROPERTY DESCRIPTION:

LOT 4A/CHolualoa 1st, District of North Kona, Island and County
of Hawaii, State of Hawaii

AFFECTS TAX MAP KEY (377-64-0076-019)

ADDITIONAL FARM DWELLING AGREEMENT

THIS AGREEMENT made and executed this 1st day of January, 2000, by and between POWER FAMILY LIMITED PARTNERSHIP herein called the "First Party," whose mailing address is 1434 Punahou Street, #524,
Honolulu, Hi. 96822, and the COUNTY OF HAWAII, herein called the "Second Party."

IT IS HEREBY AGREED that the First Party may construct an additional farm dwelling located on the property described by Tax Map Key (3) 7-6-007:019 situated within the State Land Use Ag. district and zoned A-1A district and zoned A-1A by the Second Party.

IT IS HEREBY ACKNOWLEDGED that the First Party is the legal owner (legal owner/lessee) of the property above described.

IT IS HEREBY FURTHER AGREED that this approval to construct an additional farm dwelling is given subject to the following conditions:

1. The additional farm dwelling shall be used to provide shelter to only person(s) involved in the agricultural or farm-related activity on the building site.
2. The agreement shall run with the land and apply to all persons who may now or in the future use or occupy the additional farm dwelling.
3. The landowner or lessee shall record the approved Additional Farm Dwelling Agreement with the State of Hawaii, Bureau of Conveyances and/or with the

Land Court System within thirty days from the date of receipt of approval. A copy of the recorded Additional Farm Dwelling Agreement shall be submitted to the Planning Director of the County of Hawaii prior to approval of the building permit.

IT IS HEREBY FURTHER AGREED that if this agreement is with a lessee, the legal owner shall be a party to this agreement.

IT IS HEREBY FURTHER AGREED that should the pertinent provisions of the State and County laws and rules and regulations change to authorize said farm dwelling, upon request of the First Party, this Agreement may be reconsidered for possible amendment and/or severance.

IT IS HEREBY FURTHER AGREED that if the property is situated within the State Land Use Agricultural district, the Second Party may imposed a fine of not more than \$5,000 for violation of Section 205-4.5, Hawaii Revised Statutes. If the violation is not corrected within six months of such citation and the violation continues, a citation for a new and separate violation may be imposed. There shall be a fine of not more than \$5,000 for any additional violation. The Second Party may also impose fines for any violation of Chapter 25, Hawaii County Code, as amended, in accordance with the procedures and fine schedule outlined in Division 3, Article 2, of said code.

IN CONSIDERATION OF THE AFORESAID, the Second Party hereby approves this Agreement as being in conformity with Sections 205-2 and 205-4.5 of the Hawaii Revised Statutes, relative to permitted uses within the State Land Use Agricultural district. This Agreement is also in conformance with Chapter 25, Hawaii County Code, as amended.

IN WITNESS WHEREOF, the parties have executed this agreement on the day and year first above written.

“FIRST PARTY”

**THE POWER FAMILY LIMITED PARTNERSHIP, a
Hawaii limited partnership**

By The Richard W. Power Revocable Living Trust

By Richard W. Power
RICHARD W. POWER
Trustee

By The Lillian L. Power Revocable Living Trust

By Lillian L. Power
LILLIAN L. POWER
Trustee

Its General Partners

“SECOND PARTY”

Daryn S. Arai
Planning Director Daryn S. Arai
County of Hawaii Planning Department

STATE OF HAWAII)
) SS.
COUNTY OF HAWAII)

On this 20th day of August, 2000, before me personally appeared Darwyn S. Anai, to me personally known, who, being by me duly sworn, did say that he/she is the authorized representative of the Planning Department 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 Darwyn S. Anai, acknowledged the instrument to be the free act and deed of said Planning Department, County of Hawaii.



Notary Public, State of Hawaii
Eleanor Mirikitani

My commission expires: 1/3/2003

Harry Kim
Mayor



Michael Yee
Director

Daryn Arai
Deputy Director

West Hawai'i Office
74-5044 Ane Keohokalole Hwy
Kailua-Kona, Hawai'i 96740
Phone (808) 323-4770
Fax (808) 327-3563

County of Hawai'i
PLANNING DEPARTMENT

East Hawai'i Office
101 Pauahi Street, Suite 3
Hilo, Hawai'i 96720
Phone (808) 961-8288
Fax (808) 961-8742

March 17, 2017

Michael Dylan Henshaw
Kimberly Henshaw
Dane S. Field
5317 Bloch Street
San Diego, CA 92122

Dear Mr. and Ms. Henshaw and Mr. Field:

RE: Additional Farm Dwelling Agreement (AFDA)
Time Extension
TMK: (3) 7-6-007:019 (COR-16-108868)

An Additional Farm Dwelling Agreement (AFDA) was approved on August 21, 2000 to allow for the construction of a one additional farm dwelling on the subject property. The AFDA was recorded with the Bureau of Conveyances as Document No. 2000-145733 on October 16, 2000 (copy attached). The farm plan showing the area for the proposed macadamia and avocado farm appears to be the same area later identified as Unit "B" of the CPR map on file.

Pursuant to Hawaii County Code, Section 25-5-7 (Zoning Code), approved AFDA's, are valid for a period of two years to obtain a building permit to construct the additional farm dwelling, however, there was no time limit included on the AFDA approval letter dated August 21, 2000, for the subject parcel. Therefore, we are allowing a 2-year time extension from the date of this letter for you to obtain a building permit for the additional farm dwelling, with the following conditions:

1. The additional farm dwelling shall only be used to provide shelter for persons involved in the agricultural or farm-related activity on the building site. Family members who are not engaged in agricultural or farm-related activities are allowed to reside in the farm dwelling.
2. The First Party shall allow the Second Party or its representative to inspect the farm upon reasonable prior notice.
3. The First Party shall adhere to all other applicable rules, regulations, and requirements of the Planning Department (including but not limited to the Zoning Code, Chapter 25), Department

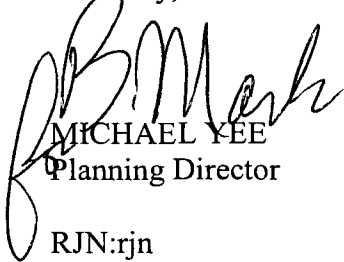
Michael Dylan Henshaw
Kimberly Henshaw
Dane S. Field
TMK: 7-6-007:019
March 17, 2017
Page 2

of Public Works, Department of Water Supply, Fire Department and State Department of Health and other reviewing agencies/divisions listed on the Building Permit Application.

4. Your Additional Farm Dwelling Agreement has been approved based primarily on proposed agricultural activity as summarized in the approved farm plan on file. It is recognized that the First Party (owners and lessees) to the Agreement shall have implemented at least 75% of the proposed farm plan within three (3) year of approval of the building permit for the additional farm dwelling. The Second Party (County of Hawaii Planning Department) of the Agreement may allow time extensions and modifications for good cause shown by the First Party.
5. Prior to submitting for a building permit application, provide proof of payment of the required facilities charge, capital assessment fees, and service lateral installation charges as apply to the subject parcel for installation of a second water meter, per Department of Water Supply letter dated August 21, 2000, or proof of payment of updated charges as assessed by DWS.
6. This Additional Farm Dwelling Agreement shall be valid for a period of two (2) years from the date of this approval letter to secure a building permit for the additional farm dwelling. Failure to secure a building permit for this additional farm dwelling on or before March 16, 2019 may cause the Director to initiate proceedings to invalidate the AFDA.

Should you have questions, please feel free to contact Rosalind Newlon of this department at (808) 323-4770.

Sincerely,



MICHAEL YEE
Planning Director

RJN:rjn

C:\Users\mnewlon\Desktop\Newlon\Letters\COR-16-108868 Henshaw AFDA.doc

Enclosure: Copy of Recorded AFDA Agreement

cc: West Hawaii Office
Zoning Inspector, Mr. Horace Yanagi
GIS Section with enclosure

THE ORIGINAL OF THE DOCUMENT
RECORDED AS FOLLOWS
STATE OF HAWAII

BUREAU OF CONVEYANCES

DATE: OCT 16 2000 TIME: 802
DOCUMENT NO: 2000 145723

AFTER RECORDATION, RETURN BY MAIL (X) PICK-UP ()

Law Offices of James C. Clay
75-5870 Walua Road, Ste. 201
Kailua-Kona, HI 96740

Total Number of Pages 6

TITLE OF DOCUMENT:

Additional Farm Dwelling Agreement

PARTIES TO DOCUMENT:

FIRST PARTY: POWER FAMILY LIMITED PARTNERSHIP, a Hawaii limited
partnership

SECOND PARTY: COUNTY OF HAWAII PLANNING DEPARTMENT

PROPERTY DESCRIPTION:

LOT 4A/Holualea 1st, District of North Kona, Island and County
of Hawaii, State of Hawaii

AFFECTS TAX MAP KEY (377-6 -007 -019)

ADDITIONAL FARM DWELLING AGREEMENT

THIS AGREEMENT made and executed this 1st day of January, 2000, by and between POWER FAMILY LIMITED PARTNERSHIP herein called the "First Party," a Hawaii limited partnership whose mailing address is 1434 Punahou Street, #524,
Honolulu, Hi. 96822, and the COUNTY OF HAWAII, herein called the "Second Party."

IT IS HEREBY AGREED that the First Party may construct an additional farm dwelling located on the property described by Tax Map Key (3) 7-6-007:019 situated within the State Land Use Ag. district and zoned A-1A district and zoned A-1A by the Second Party.

IT IS HEREBY ACKNOWLEDGED that the First Party is the legal owner of the property above described. (legal owner/lessee)

IT IS HEREBY FURTHER AGREED that this approval to construct an additional farm dwelling is given subject to the following conditions:

1. The additional farm dwelling shall be used to provide shelter to only person(s) involved in the agricultural or farm-related activity on the building site.
2. The agreement shall run with the land and apply to all persons who may now or in the future use or occupy the additional farm dwelling.
3. The landowner or lessee shall record the approved Additional Farm Dwelling Agreement with the State of Hawaii, Bureau of Conveyances and/or with the

Land Court System within thirty days from the date of receipt of approval. A copy of the recorded Additional Farm Dwelling Agreement shall be submitted to the Planning Director of the County of Hawaii prior to approval of the building permit.

IT IS HEREBY FURTHER AGREED that if this agreement is with a lessee, the legal owner shall be a party to this agreement.

IT IS HEREBY FURTHER AGREED that should the pertinent provisions of the State and County laws and rules and regulations change to authorize said farm dwelling, upon request of the First Party, this Agreement may be reconsidered for possible amendment and/or severance.

IT IS HEREBY FURTHER AGREED that if the property is situated within the State Land Use Agricultural district, the Second Party may imposed a fine of not more than \$5,000 for violation of Section 205-4.5, Hawaii Revised Statutes. If the violation is not corrected within six months of such citation and the violation continues, a citation for a new and separate violation may be imposed. There shall be a fine of not more than \$5,000 for any additional violation. The Second Party may also impose fines for any violation of Chapter 25, Hawaii County Code, as amended, in accordance with the procedures and fine schedule outlined in Division 3, Article 2, of said code.

IN CONSIDERATION OF THE AFORESAID, the Second Party hereby approves this Agreement as being in conformity with Sections 205-2 and 205-4.5 of the Hawaii Revised Statutes, relative to permitted uses within the State Land Use Agricultural district. This Agreement is also in conformance with Chapter 25, Hawaii County Code, as amended.

IN WITNESS WHEREOF, the parties have executed this agreement on the day and year first above written.

"FIRST PARTY"

THE POWER FAMILY LIMITED PARTNERSHIP, a
Hawaii limited partnership

By The Richard W. Power Revocable Living Trust

By Richard W. Power
RICHARD W. POWER
Trustee

By The Lillian L. Power Revocable Living Trust

By Lillian L. Power
LILLIAN L. POWER
Trustee

Its General Partners

"SECOND PARTY"

Daryn S. Arai
Planning Director Daryn S. Arai
County of Hawaii Planning Department

STATE OF HAWAII)
) SS.
COUNTY OF HAWAII)

On this 20th day of August, 2000, before me personally appeared

Darwyn S. Anai, to me personally known, who, being by me duly sworn, did

say that he/she is the authorized representative of the Planning Department 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 Darwyn S. Anai, acknowledged the instrument to be the free act and deed of said Planning Department, County of Hawaii.



Notary Public, State of Hawaii
Eleanor Mirikitani

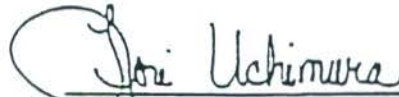
My commission expires: 1/3/2003

LS

STATE OF HAWAII)
) SS:
COUNTY OF HAWAII)

On this 31st day of January, 2000, before me personally appeared RICHARD W. POWER, Trustee of the Richard W. Power Revocable Living Trust, one of the General Partners of the POWER FAMILY LIMITED PARTNERSHIP, a Hawaii limited partnership, to me known (or proved to me on the basis of satisfactory evidence) and who executed the foregoing instrument and acknowledged to me that he executed the same as said Trustee on behalf and as the free act and deed of said general partnership

L.S.



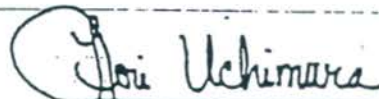
Lori Uchimura
Notary Public, State of Hawaii

My Commission expires: 6-23-2002

STATE OF HAWAII)
) SS:
COUNTY OF HAWAII)

On this 31st day of January, 2000, before me personally appeared LILLIAN L. POWER, Trustee of the Lillian L. Power Revocable Living Trust, one of the General Partners of the POWER FAMILY LIMITED PARTNERSHIP, a Hawaii limited partnership, to me known (or proved to me on the basis of satisfactory evidence) and who executed the foregoing instrument and acknowledged to me that she executed the same as said Trustee on behalf and as the free act and deed of said general partnership

L.S.



Lori Uchimura
Notary Public, State of Hawaii

My Commission expires: 6-23-2002