

Harry Kim
Mayor



Christopher J. Yuen
Director

County of Hawaii

PLANNING DEPARTMENT

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

December 13, 2000

Mr. Richard A. Silva
P.O. Box 156
Kapaau, HI 96755

Dear Mr. Silva:

Additional Farm Dwelling Agreement
Applicant: Richard A. Silva
Land Owner: Richard A. Silva and Carol M. Silva
Tax Map Key: 5-5-001:053

Pursuant to authority conferred to the Planning Director by 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 if the request was filed by the lessee.
- (d) A farm plan or evidence of the applicant's continual agricultural productivity or farming operation within the County, including an explanation of why this additional farm dwelling is needed in connection with the agricultural productivity or farming operation.
- (e) In support, evidence of a State of Hawaii, Department of Taxation General Excise Tax License (GE ID Number 30049701), has been submitted.

012700

DEC 20 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 family farm dwellings permitted within agricultural parks developed by the State, **or where agricultural activity provides income to the family occupying the dwelling.** (emphasis added)
2. The Farm Plan, supporting evidence of continuing agricultural activity, 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 taxed.
2. In addition, the following agencies have submitted their comments as stated below:
 - a. Department of Water Supply: (Memorandum dated November 21, 2000)

“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 3-inch waterline in the road, which fronts the subject parcel.

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

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

Amended comments from Department of Water Supply (Memorandum dated November 28, 2000):

“This memorandum serves to amend our November 21, 2000 memorandum to your Department.

Paragraph No. 3 should be revised as follows:

3. Remittance of the following charges, which are subject to change, to our Customer Service Section:
 - a. Facilities Charge (One 2nd service at \$3,375.00 each) \$3,375.00
 - b. Service Lateral Installation Charge
(Install one meter on a County road) +1,200.00
- Total \$4,575.00

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

b. Real Property Tax Office:

No comments

c. Department of Health: (Memorandum dated November 8, 2000)

"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 would be needed if a second wastewater disposal system is needed on this lot."

Decision:

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

1. The second farm dwelling shall only be used to provide shelter for persons 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. All other applicable rules, regulations, and requirements of the Planning Department (including but not limited to the Zoning Code, Chapter 25, Department 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.

The Planning Director has completed the appropriate portions of the enclosed 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 out for recordation, please note the following:

1. The original and one copy of the document must be submitted for recordation.

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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 Farm Dwelling Agreement to the Planning Director prior to approval of the building permit for the farm dwelling.

Should you have questions or require further information, please feel welcome to contact Larry Brown of my staff at 961-8288.

Sincerely,



CHRISTOPHER J. YUEN
Planning Director

LMB:pak
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Enclosure

xc: Mr. Milton Pavao, DWS
Mr. Frank Manalili, Finance Department

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

Richard A. Silva
P.O. Box 156
Kapaau, HI 96755

TITLE OF DOCUMENT:

Additional Farm Dwelling Agreement

PARTIES TO DOCUMENT:

Richard A. Silva & Carol M. Silva
County of Hawaii

PROPERTY DESCRIPTION:

TMK: (3) 5-5-001:053

ADDITIONAL FARM DWELLING AGREEMENT

THIS AGREEMENT made and executed this _____ day of _____, 20____,
by and between Richard A. Silva & Carol M. Silva herein called the
"First Party," whose mailing address is P.O. Box 156
Kapaau HI 96755

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 5-5-01:53
situated within the State Land Use Agricultural district
and zoned A-1a by the Second Party.

IT IS HEREBY ACKNOWLEDGED that the First Party is the legal owners
(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.

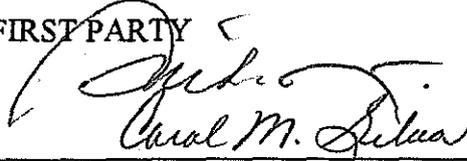
IT IS HEREBY FURTHER AGREED that should the pertinent provisions of the State and County laws and rules and regulations change to authorize said farm dwelling, upon request of the First Party, this Agreement may be reconsidered for possible amendment and/or severance.

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.

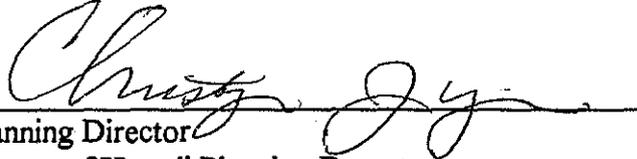
FIRST PARTY



(Legal Owner) Richard A. Silva
Carol M. Silva

(Lessee)

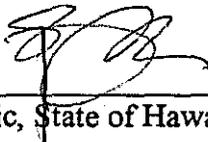
SECOND PARTY



Planning Director
County of Hawaii Planning Department

STATE OF HAWAII)
) SS.
COUNTY OF HAWAII)

On this 22nd day of September, 2000 before me personally
appeared Carlos M. Silva and Richard A. Silva, to me known to be the persons
described in and who executed the foregoing instrument, and acknowledged that ~~he~~^{she} ~~they~~ is/are NP
executed the same as ~~his~~^{her} NP free act and deed.



Notary Public, State of Hawaii

PATTI FENGERSTROM-TAMASHIRO

9/21/02



My commission expires: _____

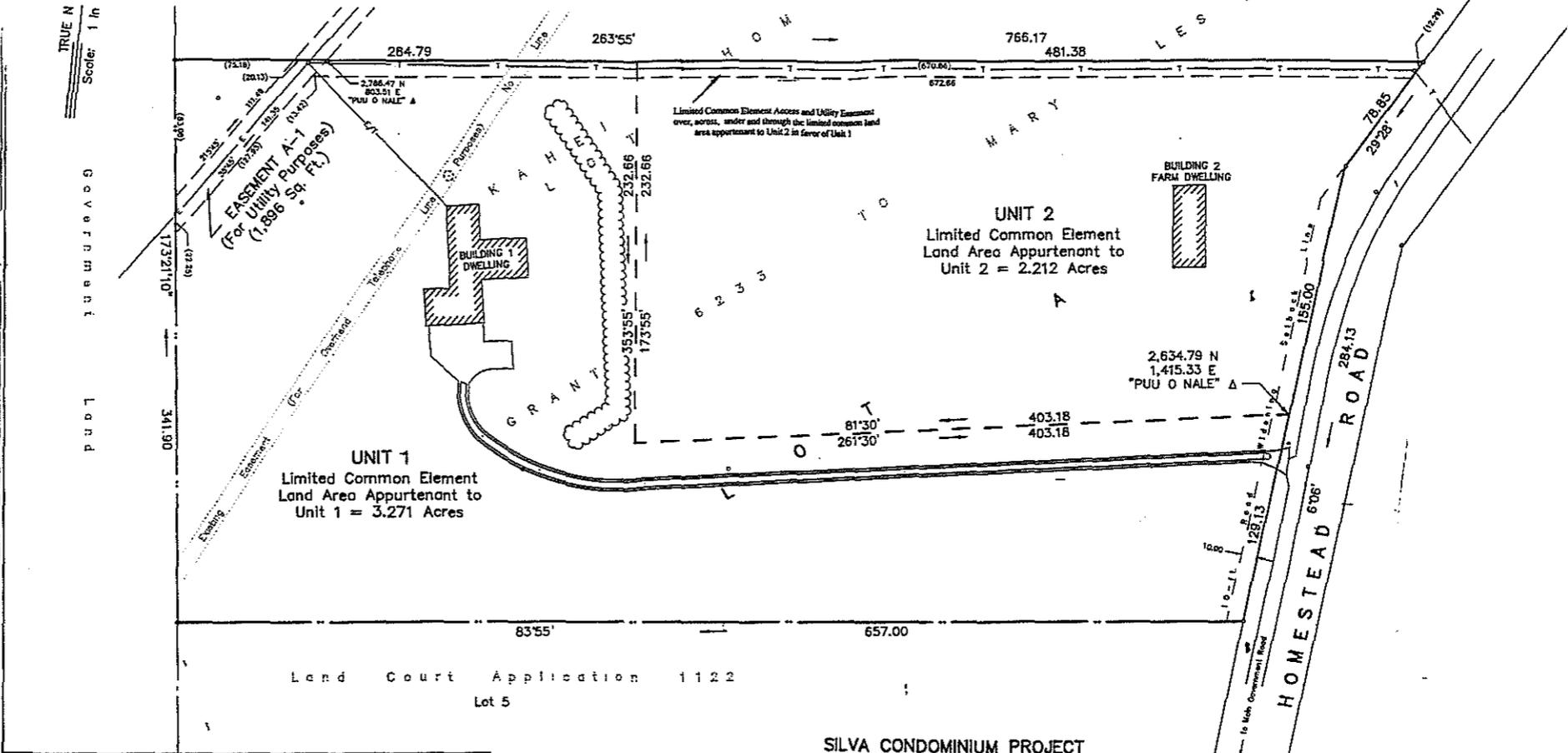
STATE OF HAWAII)
) SS:
COUNTY OF HAWAII)

On this 13th day of December, 2000, before me personally appeared Christopher J. Guen ^{per. rd} to me personally known, who, being by me duly sworn, did say that he/~~she~~ 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. Guen 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

Patricia A. Koga

My commission expires: 7/17/02



SPECIAL ATTENTION

THIS IS A CONDOMINIUM MAP, NOT A SUBDIVISION.

The heavy dashed lines which appear on the Project Plan serve to delineate the boundaries of the limited common element land area appurtenant to each respective condominium apartment and DO NOT represent legally subdivided lots. Other dashed line which may be shown hereon represent easements, radial lines and/or topographic features and are designated with their respective purposes.

SILVA CONDOMINIUM PROJECT

BEING A PORTION OF LOT 11 OF KAHEI HOMESTEADS
(BEING ALSO A PORTION OF GRANT 6233
TO MARY LESSER)
AND THE DESIGNATION OF EASEMENTS A-1 AND A-2
(FOR UTILITY PURPOSES)

OWNER: RICHARD SILVA AND
WIFE CAROL
P.O. Box 156
Kapaou, Hawaii 96755

KAHEI, NORTH KOHALA, ISLAND OF HAWAII, HAWAII

Survey and Plan by Island Survey, Inc.
P.O. Box 4215, Hilo, Hawaii 96720
January 26, 2001