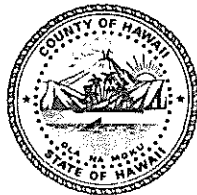


Harry Kim  
Mayor



Christopher J. Yuen  
Director

Roy R. Takemoto  
Deputy Director

## County of Hawaii

### PLANNING DEPARTMENT

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

December 5, 2001

James G. Coffey  
Leahne S. Toscano  
73-1332 Kukuna Street  
Kailua-Kona, Hawaii 96740

Dear Mr. Coffey and Ms. Toscano:

#### **Additional Farm Dwelling Agreement**

**Applicants:** James G. Coffey and Leahne S. Toscano

**Land Owners:** James G. Coffey and Leahne S. Toscano  
Frank R. Toscano and Clyda C. Toscano

**Tax Map Key:** (3) 7-3-024:023

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 submittals included the following information:

1. A notarized affidavit that the additional dwelling shall be used for farm-related purposes in the form of the enclosed Additional Farm Dwelling Agreement to be submitted for recordation with the Bureau of Conveyances.
2. Name and address of the landowner(s) or lessee(s), if the latter has a lease on the building site with a term exceeding one year from the date of the farm dwelling agreement.
3. Written authorization of the landowner(s) if the lessee filed the request.
4. 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.

Exhibit A

James G. Coffey  
Leahne S. Toscano  
Page 2  
December 5, 2001

Your farm plan included the following ongoing and proposed income producing agricultural activities on the subject property:

- (a) No ongoing agricultural activities were included in the submitted farm plan.
  - (b) Proposed agricultural activities include the following:
    - i. Planting of approximately 15,000 strawberry plants on 1 acre;
    - ii. Planting of an unspecified number of a mixed variety of citrus trees on approximately 65,847 square feet;
    - iii. Planting of an unspecified number of coffee trees on approximately 6,881 square feet;
    - iv. Planting of an unspecified number of avocado trees on approximately 6,563 square feet; and
    - v. Planting of an unspecified mixed variety of vegetables and herbs on approximately 20,000 square feet.
5. In support, evidence of a State of Hawaii Department of Taxation's General Excise (GE) Tax License has also been presented.

Findings:

1. In Chapter 205, Hawaii Revised Statutes (HRS), 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)

James G. Coffey  
Leahne S. Toscano  
Page 3  
December 5, 2001

2. The subject lot was created by subdivision (SUB 4210) approved on October 16, 1978, which, pursuant to HRS §205-4.5(b), defines the first dwelling on the lot as a farm dwelling.
3. The Farm Plan, GE Tax License (ID number 30110774), and the agreement to use the dwelling for agricultural or farm-related activity on the building site demonstrate that there will be income producing agricultural activity and the income will be taxed.
4. In addition, the following agencies have submitted their comments as stated below:
  - (a) Department of Water Supply (Letter dated November 20, 2001):

“We have reviewed the subject application and have the following comments and conditions.

For your information, an existing 5/8-inch meter services this property and is adequate for only one dwelling at 600 gallons per day. As this application is proposing an additional detached dwelling, the installation of a separate 5/8-inch meter by the applicant is required in accordance with Department regulations. Water is available from the 4-inch waterline in Kaloko Drive.

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 is the existing service.
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.

James G. Coffey  
Leahne S. Toscano  
Page 4  
December 5, 2001

3. Remittance of the following charges, which are subject to change, to our Customer Service Section:

a. Facilities Charge (One 2 <sup>nd</sup> service at \$4,350.00 each)	\$4,350.00
b. Capital Assessment Fee	500.00
c. Service Lateral Installation Charge (Install one meter on Kaloko Drive, a County road)	<u>2,250.00</u>
<b>Total (Subject to Change)</b>	<b>\$7,100.00</b>

Should there be any questions, please call our Water Resources and Planning Branch at 961-8070.”

(b) Real Property Tax Office (Memorandum dated November 16, 2001):

“Property is a three unit CPR. There is no Ag. use/dedication or Ag. use assessment in effect or on file.

Real Property taxes are paid through December 31, 2001 for all three parcels.”

(c) Department of Health (Memorandum dated November 19, 2001):

“The proposed Septic Tank System would need to be designed by a Registered Professional Engineer licensed by the State of Hawaii. Please submit the plans to the Wastewater Branch in Kona for approval.”

Decision:

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

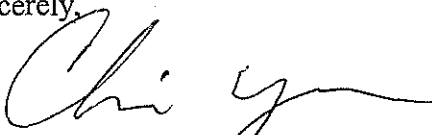
1. The additional farm dwelling shall only be used to provide shelter for persons involved in the agricultural or farm-related activity on the building site. Family members who are not engaged in agricultural or farm-related activities are allowed to reside in the farm dwelling.
2. The agreement shall run with the land and apply to all persons who may, now or in the future, use or occupy the additional farm dwelling.

James G. Coffey  
Leahne S. Toscano  
Page 5  
December 5, 2001

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.
4. Your Additional Farm Dwelling Agreement has been approved based entirely on proposed agricultural activity as summarized previously in this letter. It is required that the First Party (owners and lessees) to the Agreement shall have implemented at least 75% of the proposed farm plan within three (3) years 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 First Party.
5. The First Party shall allow the Second Party or its representative to inspect the farm upon reasonable prior notice.
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 December 5, 2003 may cause the Director to initiate proceedings to invalidate the AFDA.

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

Sincerely,



CHRISTOPHER J. YUEN  
Planning Director

LMB:pak

P:\WPWIN60\Larry\FDA\Toscano 7-3-24-23 apvl.doc

Enclosure: AFDA document  
AFDA document instructions

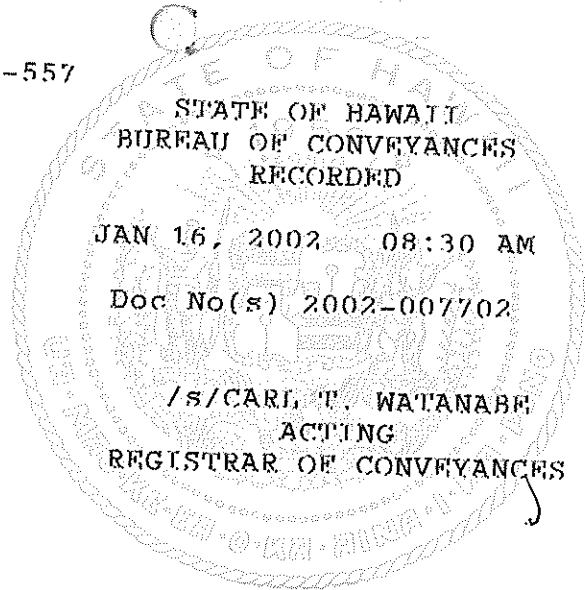
Exhibit A

James G. Coffey  
Leahne S. Toscano  
Page 6  
December 5, 2001

xc: Mr. Milton Pavao, DWS  
Mr. Mike McCall, RPT  
Planning Department – West Hawaii Office

25  
C

R-557



b

AFTER RECORDATION, RETURN BY MAIL TO:

County of Hawaii Planning Department  
 25 Aupuni Street, Room 109  
 Hilo, Hawaii 96720

TITLE OF DOCUMENT:

**ADDITIONAL FARM DWELLING AGREEMENT**

PARTIES TO DOCUMENT:

**FIRST PARTY: JAMES G. COFFEY, LEAHNE S. TOSCANO,  
 FRANK R. TOSCANO and CLYDA C. TOSCANO**

**SECOND PARTY: COUNTY OF HAWAII**

PROPERTY DESCRIPTION:

**TMK: (3) 7-3-024:023**

2 = 1.917  
 1.033  
 2.950

ADDITIONAL FARM DWELLING AGREEMENT

THIS AGREEMENT made and executed this 5th day of December, 2001, by and between JAMES G. COFFEY, LEAHNE S. TOSCANO, FRANK R. TOSCANO, and CLYDA C. TOSCANO, herein called the "First Party," whose mailing address is 73-1332 Kukuna Street, Kailua-Kona, Hawaii 96740, 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) 7-3-024:023 situated within the State Land Use Agricultural district and zoned Agricultural (A-20a) by the Second Party.

IT IS HEREBY ACKNOWLEDGED that the First Party is the legal owner 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 person(s) involved in the agricultural or farm-related activity on the property. Family members who are not engaged in agricultural or farm-related activity are allowed to reside in the farm dwelling.
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 agreement shall include any and all conditions specified in the Additional Farm Dwelling Agreement letter, attached to this document as Exhibit "A".

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.

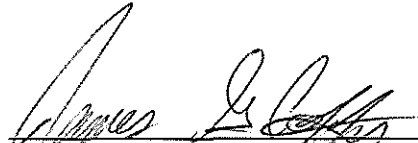


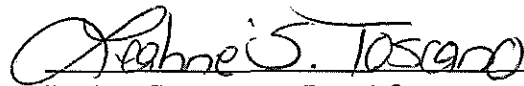
IT IS HEREBY FURTHER AGREED that if the property is situated within the State Land Use Agricultural district, the Second Party may impose a fine of not more than \$5,000 for violation of Section 205-4.5, Hawaii Revised Statutes. If the violation is not corrected within six months of such citation and 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.

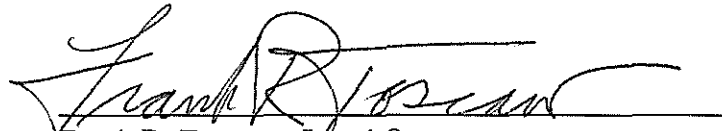
IN CONSIDERATION OF THE AFORESAID, the Second Party hereby approves this Agreement as being in conformity with Sections 205-2 and 205-4.5 of the Hawaii Revised Statutes, relative to permitted uses within the State Land Use Agricultural district. This Agreement is also in conformance with Chapter 25,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

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

FIRST PARTY:


  
James G. Coffey, Legal Owner

  
Leahne S. Toscano, Legal Owner

  
Frank R. Toscano, Legal Owner

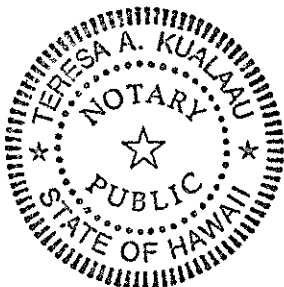
  
Clyda C. Toscano, Legal Owner

SECOND PARTY:

  
Christopher J. Yuen, Planning Director  
County of Hawaii Planning Department

STATE OF HAWAII )  
 ) SS.  
COUNTY OF HAWAII )

On this 17 day of December, 2001 before me personally appeared JAMES G. COFFEY, LEAHNE S. TOSCANO, FRANK R. TOSCANO, and CLYDA C. TOSCANO to me known to be the person described in and who executed the foregoing instrument, and acknowledged that she executed the same as her free act and deed.



Teresa A. Kualau  
Notary Public, State of Hawaii

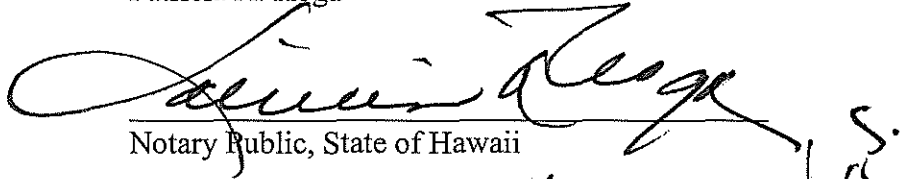
TERESA A. KUALAAU  
Notary Public, Third Judicial Circuit  
State of Hawaii

My commission expires: 10/24/2003

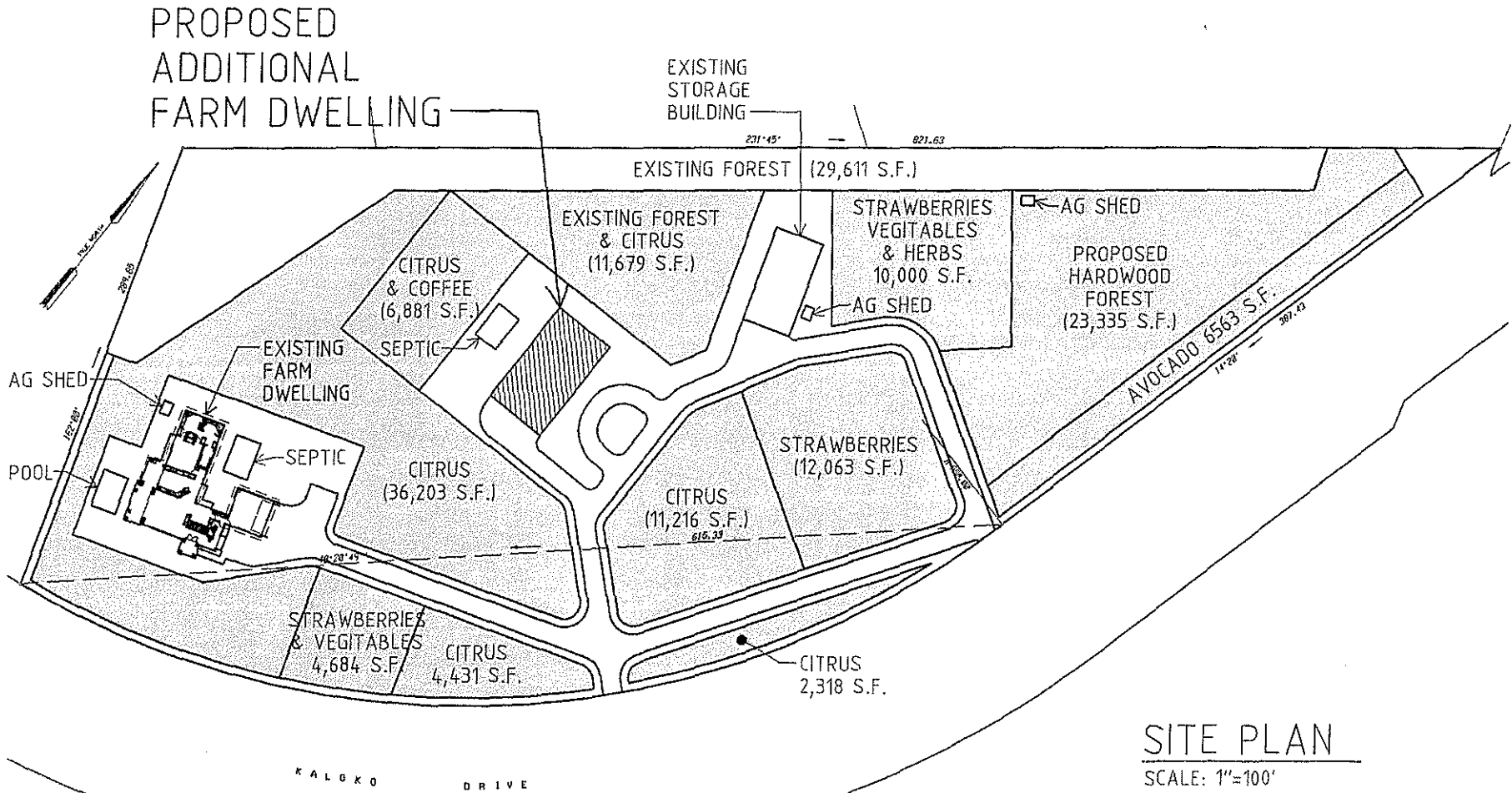
STATE OF HAWAII )  
 ) SS  
COUNTY OF HAWAII )

On this 7<sup>th</sup> day of January, 2002 *per, NP* 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: 7/17/02 *V.S.*



SITE PLAN  
SCALE: 1"=100'

BUILDING AREAS:	
FARM DWELLING	5,048 SQ FT
ADDITIONAL FARM DWELLING	2,800 SQ FT
STORAGE BUILDING	1,984 SQ FT
GRAND TOTAL	9,832 SQ FT

TMK (3) 7-3-24:23  
LOT 3  
LOT AREA: 4.998 ACRES

OHIA WINDS FARM  
KALOKO MAUKA, HAWAII