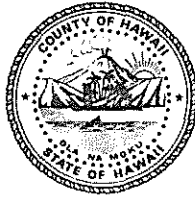


Harry Kim
Mayor



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

May 31, 2001

James and Antonia Folan
73-4655 Kohanaiki Road, #B-14
Kailua-Kona, Hawaii 96740-9246

Dear Mr. & Mrs. Folan:

Additional Farm Dwelling Agreement

Applicants: James Folan and Antonia Folan

Land Owners: James Folan and Antonia Folan

Tax Map Key: (3) 7-3-008:059

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 proposed Additional Farm Dwelling Agreement.
2. Name and address of the landowner.
3. 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. Your farm plan included the following ongoing and proposed agricultural activities:
 - (a) An existing coffee tree orchard consisting of approximately 3,000 2-year old trees;
 - (b) Additional planting of approximately 7,000 additional coffee trees.

Exhibit A

4. In support, evidence of receipts for the sale of cherry coffee has also been presented.

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, income receipts, and the agreement to use the dwelling for agricultural or farm-related activity on the building site demonstrate that there is agricultural activity providing income to the occupants of the farm dwellings.
3. In addition, the following agencies have submitted their comments as stated below:

(a) Department of Water Supply (Memorandum dated April 16, 2001):

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

For your information, two existing 5/8-inch meters services this property and is adequate for two dwellings at 1,200 gallons per day. This application is proposing a second detached dwelling; therefore, the additional farm dwelling will need to connect to the second 5/8-inch meter already installed. Water is available from the 8-inch waterline in Napoopoo Road, which fronts the subject parcel.

The Department has no objections to the proposed application subject to the applicant understanding and accepting the following condition:

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. The backflow preventer shall be operated and maintained by the

James and Antonia Folan
Page 3
May 25, 2001

customer. A copy of our backflow preventer handout is being forwarded to the applicant to help them understand this requirement.

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

(b) Real Property Tax Office (Memorandum dated March 22, 2001):

“Property is not receiving an agricultural assessment nor is there an application on file.

Real Property taxes are paid through June 30, 2001.”

(c) Department of Health (Memorandum dated April 3, 2001):

“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.

James and Antonia Folan

Page 4

May 25, 2001

4. This Additional Farm Dwelling Agreement shall be valid for a period of two (2) years from the date of this approval letter. Failure to secure a building permit for this additional farm dwelling on or before May 31, 2003 may cause the Director to initiate proceedings to invalidate the AFDA.
5. The First Party shall allow the Second Party or its representative to inspect the farm upon reasonable prior notice.

Due to changes in our AFDA form and processing procedures it will be necessary for you to complete the enclosed AFDA form in lieu of the original form submitted with your application. Please be sure to follow the provided instructions for the completion of this form carefully. We apologize for any inconvenience you may experience due to this change.

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

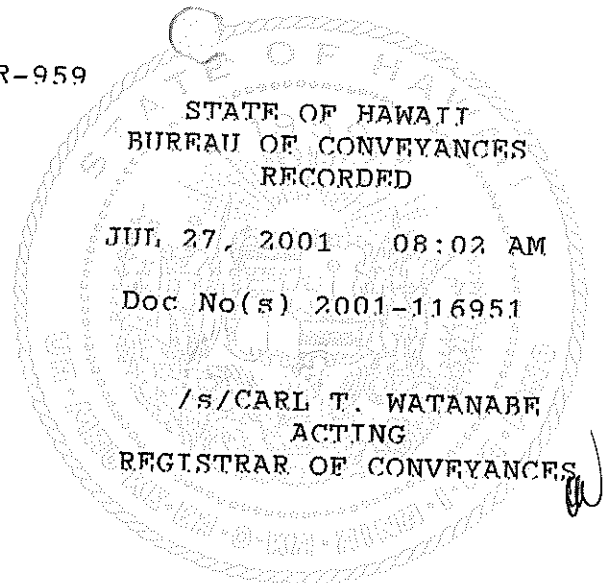
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Enclosure

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

Exhibit A

R-959



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 FOLAN and ANTONIA FOLAN

SECOND PARTY: COUNTY OF HAWAII

PROPERTY DESCRIPTION:

TMK: (3) 7-3-008:059

ADDITIONAL FARM DWELLING AGREEMENT

THIS AGREEMENT made and executed this 16th day of May, 2001, by and between JAMES FOLAN and ANTONIA FOLAN herein called the "First Party," whose mailing address is 73-4655 Kohanaiki Road, #B-14, Kailua-Kona, Hawaii 96740-9246, 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) 7-3-008:059 situated within the State Land Use Agricultural district and zoned Agricultural (A-3a) 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.

HAWAII ALL-PURPOSE ACKNOWLEDGMENT H.R.S 502-41

State of Hawaii }
County of Hawaii } ss.

On this 10th day of July, 2001,
Day Month Year

before me personally appeared

(1) James Folan
Name of Signer

(2) and Antonia Folan
Name of Signer



to me personally known, 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 capacity shown, having been duly authorized to execute such instrument in such capacity.

Norma P. Matsumoto
Signature of Notary Public

My commission expires: June 17, 2003

OPTIONAL

Though the information in this section is not required by law, it may prove valuable to persons relying on the document and could prevent fraudulent removal and reattachment of this form to another document.

Description of Document and Signer

Additional Farm
Document Title/Type: Dwelling Agreement Date: 7/10/01 No. Pgs.: 4

Signer(s) Other Than Named Above: _____

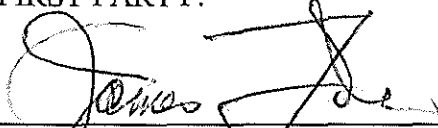
Signer's Capacity: _____ Representing: _____

RIGHT THUMBPRINT OF SIGNER #1
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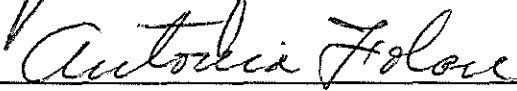
RIGHT THUMBPRINT OF SIGNER #2
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IN WITNESS WHEREOF, the parties have executed this agreement on the day and year first above written.

FIRST PARTY:

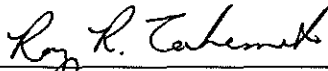


James Folan, Legal Owner



Antonia Folan, Legal Owner

SECOND PARTY:

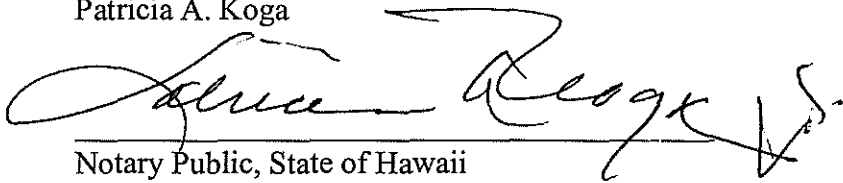


Christopher J. Yuen, Planning Director
County of Hawaii Planning Department

STATE OF HAWAII)
) SS
COUNTY OF HAWAII)

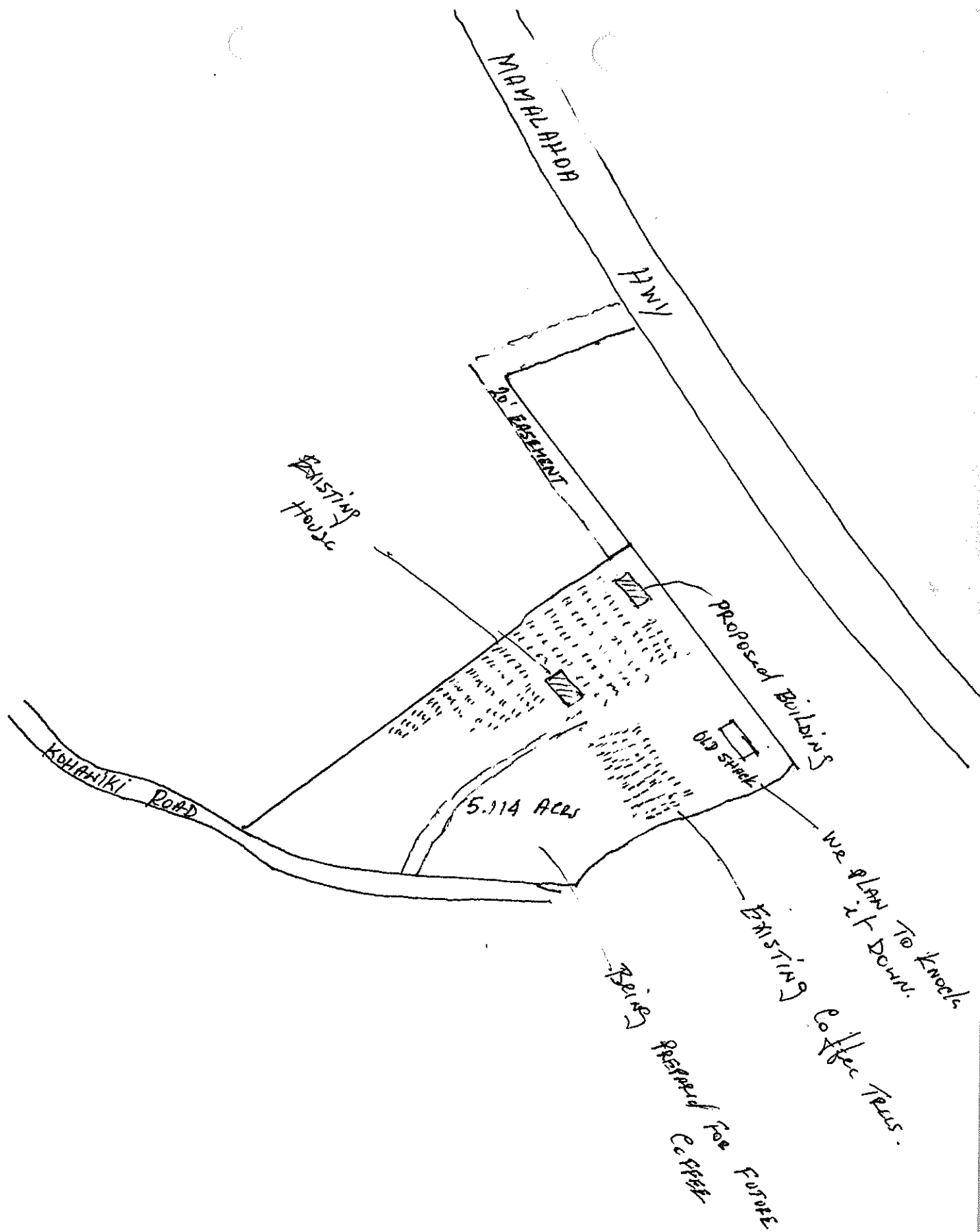
On this 25th day of July, 2001 before me personally appeared Roy R. Takemoto, to me personally known, who, being by me duly sworn, did say that he is the Deputy Planning Director of the County of Hawaii; and that the Planning Department of the County of Hawaii has no corporate seal; and that the instrument was signed on behalf of the Planning Department of the County of Hawaii, a government agency, and said Roy R. Takemoto 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



FOLAN'S PROPERTY