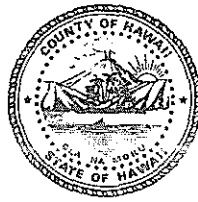


Harry Kim  
Mayor



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

July 16, 2001

Mr. Arthur Jeff Lee  
75-5270 Mamalahoa Hwy.  
Holualoa, Hawaii 96725

Dear Mr. Lee:

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

**Applicant:** Arthur Jeff Lee

**Land Owners:** Arthur Jeff Lee and Marlina A. Lee

**Tax Map Key:** (3) 7-5-002:042

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 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.
3. Written authorization of the landowners 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. Your farm plan included the following ongoing and proposed agricultural activities:
  - (a) Ongoing agricultural activities include the following:
    - i. Approximately 100 mature and producing coffee trees for eventual commercial harvest;

Exhibit A

- ii. Approximately 400 coffee trees on one acre that was planted in 1999 for eventual commercial harvest;
- iii. Average of five (5) sheep are pastured with sales of approximately 4 head per year;
- iv. Average of six (6) goats are pastured with sales of approximately 4 head per year;
- v. Five (5) mango trees between 4 and 7 years old for eventual commercial harvest;
- vi. Six (6) mature macadamia nut trees for eventual commercial harvest;
- vii. Approximately forty (40) mature avocado trees of mixed variety for eventual commercial harvest.

(b) Proposed agricultural activities include the following:

- i. Planting of an additional four (4) acres in coffee trees for commercial harvest;
  - ii. Planting of approximately ½ acre in mango trees for commercial harvest;
  - iii. Eventual husking and roasting of coffee cherries.
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, 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 subject lot was created by subdivision (Land Commission Award 9971:27) approved

in 1954, which, pursuant to HRS §205-4.5(b), defines the first dwelling on the lot as a single-family dwelling.

3. The Farm Plan, GE Tax License (ID number 30123988), 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 that income will be taxed.
4. In addition, the following agencies have submitted their comments as stated below:
  - (a) Department of Water Supply (Letter dated June 15, 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. 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 Mamalahoa Highway.

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 per day.
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 effective April 1, 2001, which are subject to change, to our Customer Service Section:

Mr. Arthur Jeff Lee  
Page 4  
July 16, 2001

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 Mamalahoa Highway, 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 contact our Water Resources and Planning Branch at 961-8070.”

(b) Real Property Tax Office:

No comments were submitted.

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

“The Health Department found no environmental health concerns with regulatory implications in the submittals.”

Decision:

In view of the above, your request to construct a second dwelling (first 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.
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.
4. Your Additional Farm Dwelling Agreement has been approved based partially 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

Exhibit A

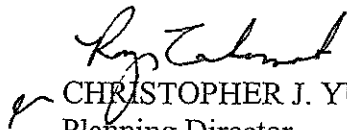
Mr. Arthur Jeff Lee  
Page 5  
July 16, 2001

50% 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 June 28, 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\Lee 7-5-2-42 apvl.doc

Enclosure

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

Exhibit A

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AFTER RECORDATION, RETURN BY MAIL TO:

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

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TITLE OF DOCUMENT:

**ADDITIONAL FARM DWELLING AGREEMENT**

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PARTIES TO DOCUMENT:

**FIRST PARTY: ARTHUR JEFF LEE and MARLINA A. LEE**

**SECOND PARTY: COUNTY OF HAWAII**

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PROPERTY DESCRIPTION:

**TMK: (3) 7-5-002:042**

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## ADDITIONAL FARM DWELLING AGREEMENT

THIS AGREEMENT made and executed this 28th day of June, 2001, by and between ARTHUR JEFF LEE and MARLINA A. LEE herein called the "First Party," whose mailing address is 75-5270 Mamalahoa Highway, Holualoa, Hawaii 96725, 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) 7-5-002:042 situated within the State Land Use Agricultural district and zoned Agricultural (A-5a) 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.

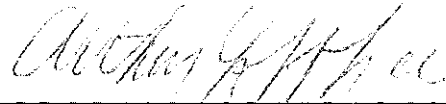
IT IS HEREBY FURTHER AGREED that if the property is situated within the State Land Use Agricultural district, the Second Party may impose a fine of not more than \$5,000 for violation of Section 205-4.5, Hawaii Revised Statutes. If the violation is not corrected within six months of such citation and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



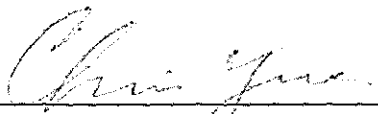
IN WITNESS WHEREOF, the parties have executed this agreement on the day and year first  
above written.

FIRST PARTY:

  
\_\_\_\_\_  
Arthur Jeff Lee, Legal Owner

  
\_\_\_\_\_  
Marlina A. Lee, Legal Owner

SECOND PARTY:

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

STATE OF HAWAII )  
 ) SS.  
COUNTY OF HAWAII )

On this 10th day of September, 2001 before me personally appeared ARTHUR JEFF LEE and MARLINA A. LEE to me known to be the person(s) described in and who executed the foregoing instrument, and acknowledged that they executed the same as their free act and deed.



Patricia R. Selin

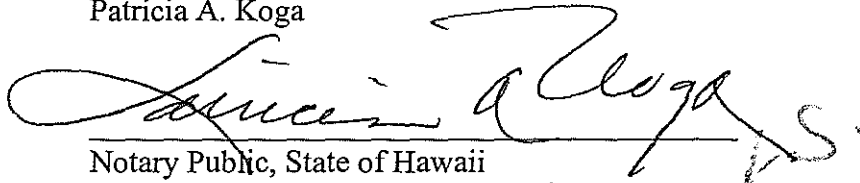
Notary Public, State of Hawaii

My commission expires: 6/07/2002

STATE OF HAWAII            )  
                                          ) SS  
COUNTY OF HAWAII        )

On this 5<sup>th</sup> day of October, 2001 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

