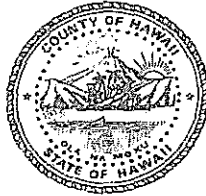


Harry Kim
Mayor



Christopher J. Yue
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

Donald S. F. Liu
Mee Kyung Liu
P.O. Box 222
Kapaau, Hawaii 96755

Dear Mr. and Mrs. Liu:

Additional Farm Dwelling Agreement

Applicants: Donald S. F. Liu and Mee Kyung Liu

Land Owners: Donald S. F. Liu and Mee Kyung Liu

Tax Map Key: (3) 5-5-004:042

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. The subject 6.403-acre parcel was created by subdivision approved on August 22, 1949, is zoned Agricultural (A-20a) by Hawaii County and is situated within the State Land Use Agricultural district. Therefore, the existing first dwelling on the subject property is defined by Hawaii Revised Statutes, §205-4.5(b) as a single-family dwelling, thus making the requested additional dwelling the first farm dwelling. 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 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 landowner if the lessee filed the request.

Exhibit A

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Mee Kyung Liu
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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 activity:

- i. Approximately 0.10 acres mixed vegetable garden for commercial sales;
- ii. Four (4) avocado trees on approximately 0.05 acres for commercial sales of avocados;
- iii. Eight (8) papaya trees on approximately 0.05 acres for commercial sales of papayas;
- iv. Fifty (50) macadamia nut trees on approximately 0.60 acres for commercial sales of macadamia nuts;
- v. Ten (10) coconut trees on approximately 0.10 acres for commercial sales of coconut trees to resorts.

(b) Proposed agricultural activity:

- i. Planting of an additional thirty (30) papaya trees on approximately 0.30 acres for commercial papaya sales.
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**

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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, GE Tax License (ID number 30122637), 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 from your agricultural activity is being taxed.
3. In addition, the following agencies have submitted their comments as stated below:
 - (a) Department of Water Supply (Letter dated May 22, 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 6-inch waterline in Akoni-Pule Highway, which fronts the subject parcel, when the North Kohala Water System Improvements project is completed and operational. The project is currently in construction and will be completed in the near future.

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. This service will be available only upon the North Kohala Water System Improvements being completed and operational.
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

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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 \$4,350.00 each)	\$4,350.00
b. Service Lateral Installation Charge (Install one meter on Akoni-Pule Highway, a State road)	<u>+4,000.00</u>
Total (Subject to Change)	\$8,350.00

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

(b) Real Property Tax Office (Letter dated June 18, 2001):

“This letter can be used as verification of the current “Standard Agricultural Use” program with pasture grazing of farm animals.

All of the agricultural zoned area on Liu Family land parcel has been in continuous pasture grazing for the last eleven years that I have worked in North Kohala.

Please let me know if I can be of further service in assisting with the application for the additional farm swelling agreement.”

(c) Department of Health (Memorandum dated May 22, 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.”

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Decision:

In view of the above, your request to construct an additional farm dwelling (second 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. Evidence that the second kitchen in the existing first dwelling has been removed shall be submitted to the Planning Department prior to approval of a building permit for this additional farm dwelling.
4. 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.
5. 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 75% of the proposed farm plan within three (3) years of approval of the building permit for the additional farm dwelling. Time extensions and modifications may be allowed by the Second Party (County of Hawaii Planning Department) of the Agreement for good cause shown by First Party.
6. The First Party shall allow the Second Party or its representative to inspect the farm upon reasonable prior notice.
7. 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 21, 2003 may cause the Director to initiate proceedings to invalidate the AFDA.

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Mee Kyung Liu
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Due to modifications in our AFDA form it will be necessary for you to complete the enclosed AFDA according to the provided instructions. The AFDA form you previously completed, signed and had notarized is not acceptable for this approval. For your information, a new AFDA form would have been required anyway due to some improperly made corrections to the form you submitted. Please accept our apologies for any inconvenience you may experience due to this requirement.

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\liu 5-5-4-42 apvl.doc

Enclosure

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

THE ORIGINAL OF THE DOCUMENT
RELAYED TO THE RECORDS
SECTION OF HAWAII

BUREAU OF CONVEYANCES

SEP. 08 2001 9:30
DATE.....
DOCUMENT NO. 2001-139185

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: DONALD S. F. LIU and MEE KYUNG LIU

SECOND PARTY: COUNTY OF HAWAII

PROPERTY DESCRIPTION:

TMK: (3) 5-5-004:042

ADDITIONAL FARM DWELLING AGREEMENT

THIS AGREEMENT made and executed this 21st day of June, 2001, by and between DONALD S. F. LIU and MEE KYUNG LIU herein called the "First Party," whose mailing address is P.O. Box 222, Kapaau, Hawaii 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 (3) 5-5-004:042 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.

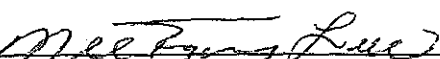
IN CONSIDERATION OF THE AFORESAID, the Second Party hereby approves this Agreement as being in conformity with Sections 205-2 and 205-4.5 of the Hawaii Revised Statutes, relative to permitted uses within the State Land Use Agricultural district. This Agreement is also in conformance with Chapter 25,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

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

FIRST PARTY:

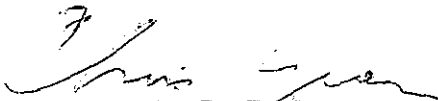


Donald S. F. Liu, Legal Owner



Mee Kyung Liu, Legal Owner

SECOND PARTY:



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

STATE OF HAWAII)
) SS.
COUNTY OF HAWAII)

On this 26th day of JULY, 2001 before me personally appeared DONALD S. F. LIU and MEE KYUNG LIU 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.

Meg D. C. Ignacio
Notary Public, State of HAWAII, 3rd CIRCUIT COURT

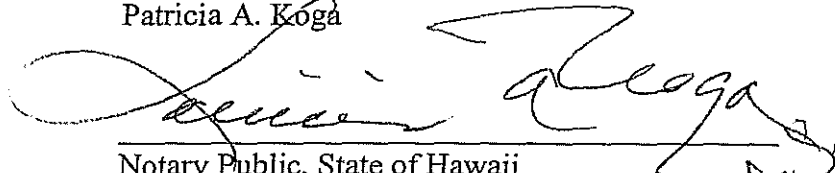
89.

My commission expires: 8.28.2002

STATE OF HAWAII)
) SS
COUNTY OF HAWAII)

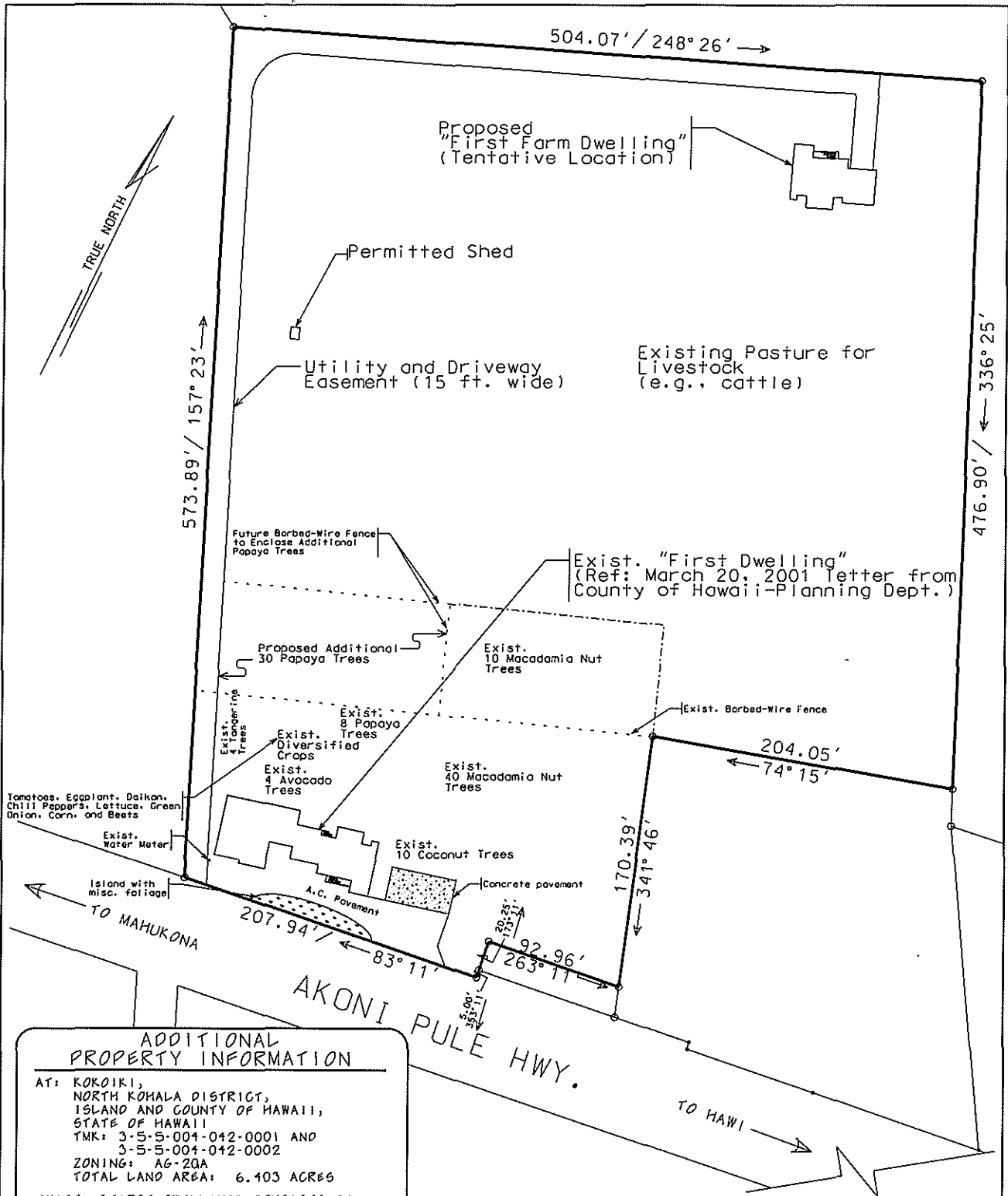
On this 27th day of August, 2001 before me personally appeared Christopher J. Yuen, to me personally known, who, being by me duly sworn, did say that he is the Planning Director of the County of Hawaii; and that the Planning Department of the County of Hawaii has no corporate seal; and that the instrument 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



ADDITIONAL PROPERTY INFORMATION

AT: KOKOIKI, NORTH KOHALA DISTRICT, ISLAND AND COUNTY OF HAWAII, STATE OF HAWAII
 TMK: 3-5-5-001-042-0001 AND 3-5-5-001-042-0002
 ZONING: AG-2QA
 TOTAL LAND AREA: 6.103 ACRES

EXIST. "FIRST DWELLING" CONSISTS OF:

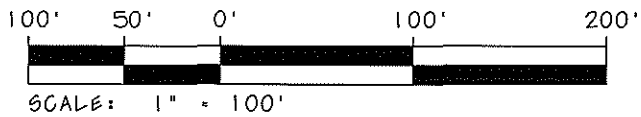
DWELLING STRUCTURE:

- 5 BEDROOMS
- 2 BATHROOMS
- 1 OFFICE/STORAGE ROOM
- 1 KITCHEN
- 1 KITCHENETTE
- 1 CARPORT

COMMERCIAL STRUCTURE:
 (Former Kohala Kim Chee Shop)

- 1 WORK/SHOP AREA
- 1 OFFICE / STORAGE AREA
- 1 COVERED STORAGE AREA
- 1 CAR-PORT AREA

PROPOSED "FIRST FARM DWELLING":
 DESIGN NOT DEVELOPED; THEREFORE, NUMBER OF BEDROOMS IS UNKNOWN.



SITE PLAN

EXHIBIT-A		DRAWING
FOR COUNTY OF HAWAII ADDITIONAL FARM DWELLING AGREEMENT APPLICATION		1
PLANS DATE: APRIL 9, 2001	PLANS BY: A. LIU / PHONE: 550-0260	SCALE: 1" = 100'