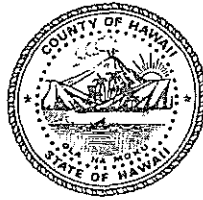


Harry Kim
Mayor



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

August 24, 2001

Joseph and Sandra McCleskey
68-3757 Kimo Nui Street
Waikoloa, Hawaii 96738

Dear Mr. & Mrs. McCleskey:

Additional Farm Dwelling Agreement

Applicants: Joseph H. McCleskey and Sandra R. McCleskey

Land Owners: Joseph H. McCleskey and Sandra R. McCleskey
Alan C. Coleman and Lucia T. Coleman

Tax Map Key: (3) 4-4-005:021

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.

Handwritten signature or initials

Exhibit A

Joseph and Sandra McCleskey

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August 24, 2001

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) No ongoing agricultural activities were identified.
 - (b) Proposed agricultural activities include the following:
 - i. CPR Unit #2, owned by Alan C. and Lucia T. Coleman, proposes maintaining two breeding herds totaling approximately 250 cows, including keeping 20-30 replacement heifers and grass fed cattle per year, the raising and caring of orphaned calves as necessary, and the raising and training of horses for ranch work for commercial purposes;
 - ii. CPR Unit #1, owned by Joseph & Sandra McCleskey and applicants for the requested AFDA, propose to plant and maintain an unspecified variety of native Hawaiian plants, shrubs, and trees that will include approximately 500 shrubs and trees less than one year old, 300 shrubs and trees up to two years old, 200 trees up to three years old, and 25 trees planted in the ground to mature beyond three years in age for sale to the general public for landscaping use.
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)

Joseph and Sandra McCleskey

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2. The subject lot was created by subdivision (SUB 6988) approved on May 29, 1998, 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 numbers 10649437 & 30100878), 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 July 26, 2001):

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

For your information, this parcel is part of subdivision and has no existing service. In this area, subdivisions created by variance are allowed one service (5/8-inch meter) on a first-come, first-served basis. Our records show that one service already exists for this subdivision. Inasmuch as this application is proposing an additional detached dwelling, the installation of a separate 5/8-inch meter by the applicant would normally be required in accordance with Department regulations. However, the Department's existing water system facilities cannot support any additional meters at this time. Extensive improvements and additions, including source, storage, transmission, booster pumps, and distribution facilities must be constructed. Currently, sufficient funding is not available and no time schedule is set.

Therefore, the Department has no objections to the proposed application subject to the applicant understanding and accepting that the Department cannot provide water service to the proposed additional farm dwelling. Further, should the application be approved, dwellings in the subdivision must not share the existing meter.

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

Joseph and Sandra McCleskey
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August 24, 2001

(b) Real Property Tax Office (Memorandum dated July 18, 2001):

“Property is receiving agricultural use value.

TMK is a 2 unit condo.

Taxes for 4-4-005-021 are paid through June 30, 2001. CPRs 0001 & 0002 will be taxed separately for 2001-02.”

(c) Department of Health (Memorandum dated July 25, 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 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.
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

Joseph and Sandra McCleskey

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August 24, 2001

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.

5. Per a telephone conversation between Sandra McCleskey and staff on August 23, 2001, the applicants agree that the proposed agricultural activities summarized previously in this letter shall produce income to the occupants of the requested additional farm dwelling within three (3) years of approval of the building permit for the additional farm dwelling, and that the First Party, upon request of the Second Party, shall provide adequate documentation to substantiate the income earned.
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 August 24, 2003 may cause the Director to initiate proceedings to invalidate the AFDA.

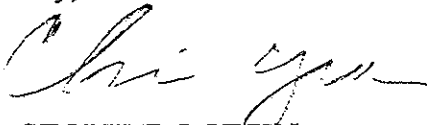
In reference to the Department of Water Supply's comment, may we suggest the following?

1. Any dwelling not serviced by a County water system should be provided with and maintain a private potable rain-water catchment system with a minimum capacity of 6,000 gallons for domestic consumption or potable uses. This catchment system should adhere to the Department of Public Works, Building Division's "Guidelines for Owners of Rain Catchment Water Systems" as well as the State Department of Health requirements related to water testing and water purifying devices.
2. Any farm dwelling should be provided with and maintain a private water supply system with an additional minimum storage capacity of 3,000 gallons for fire fighting and other emergency purposes. The emergency water supply system, including the necessary compatible connection devices and the location of the water storage unit on the property, should meet with the approval of the Hawaii County Fire Department.

Joseph and Sandra McCleskey
Page 6
August 24, 2001

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

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: JOSEPH H. McCLESKEY and SANDRA R. McCLESKEY
 ALAN C. COLEMAN and LUCIA T. COLEMAN**

SECOND PARTY: COUNTY OF HAWAII

PROPERTY DESCRIPTION:

TMK: (3) 4-4-005:021

ADDITIONAL FARM DWELLING AGREEMENT

THIS AGREEMENT made and executed this 24th day of August, 2001, by and between JOSEPH H. McCLESKEY, SANDRA R. McCLESKEY, ALAN C. COLEMAN, and LUCIA T. COLEMAN, herein called the "First Party," whose mailing address is 68-3757 Kimo Nui Street, Waikoloa, Hawaii 96738, 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) 4-4-005:021 situated within the State Land Use Agricultural district and zoned Agricultural (A-40a) 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.

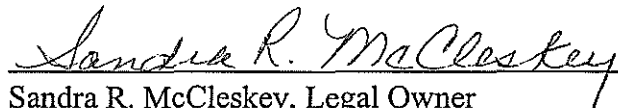
IN CONSIDERATION OF THE AFORESAID, the Second Party hereby approves this Agreement as being in conformity with Sections 205-2 and 205-4.5 of the Hawaii Revised Statutes, relative to permitted uses within the State Land Use Agricultural district. This Agreement is also in conformance with Chapter 25,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

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

FIRST PARTY:



Joseph H. McCleskey, Legal Owner



Sandra R. McCleskey, Legal Owner

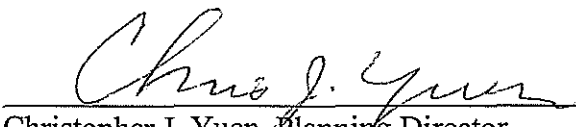


Alan C. Coleman, Legal Owner




Lucia T. Coleman, Legal Owner

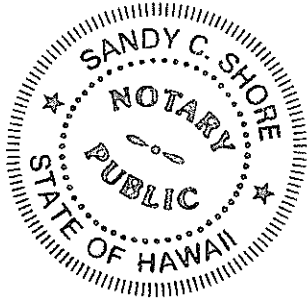
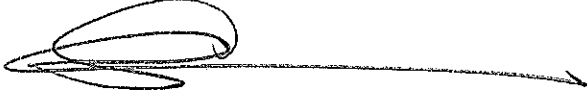
SECOND PARTY:



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

STATE OF HAWAII)
) SS.
COUNTY OF HAWAII)

On this 31 day of August, 2001 before me personally appeared JOSEPH H. McCLESKEY, SANDRA R.  McCLESKEY, ~~ALAN C. COLEMAN~~, and ~~LUCIA T. COLEMAN~~ 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.



Notary Public, State of Hawaii

Sandy C. Shore
Expiration Date: October 15, 2004

My commission expires: _____

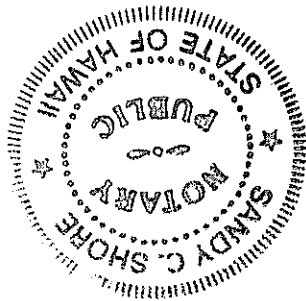
STATE OF HAWAII

COUNTY OF HAWAII

)
)
)
SS:

On this 31st day of August, 2001, personally appeared _____

Alan C Coleman, 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.



[Handwritten Signature]

Notary Public, in and for _____
County and State of Hawaii

Print Name: Sandy C. Shore
Expiration Date: October 15, 2004

My Commission Expires: _____

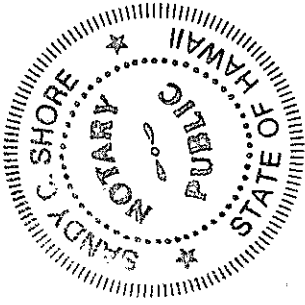
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STATE OF HAWAII)
)
COUNTY OF HAWAII)

SS:

On this 31 day of August, 2001, personally appeared _____
Lucia T Coleman, 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.



A handwritten signature in black ink, appearing to be "Sandy C. Shore", written over a horizontal line.

Notary Public, in and for
County and State of Hawaii

Print Name: Sandy C. Shore
Expiration Date: October 15, 2004

My Commission Expires: _____

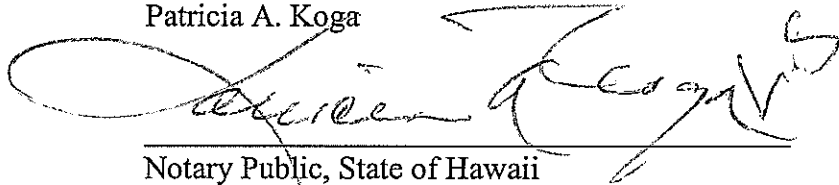
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SCS:scs

99250tges (rev. 11/2000)

STATE OF HAWAII)
) SS
COUNTY OF HAWAII)

On this 30th 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:

11/7/02

PLAT A

McCleskey

