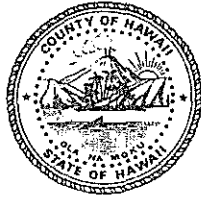


Harry Kim  
Mayor



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 23, 2001

Mr. Alton M. Oye  
c/o Mr. Klaus D. Conventz  
Baumeister Consulting  
P.O. Box 2308  
Kailua-Kona, Hawaii 96745

Dear Mr. Oye:

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

**Applicant:** Alton M. Oye

**Land Owners:** Alton M. Oye, Peter G. Banks and Kerry I. Banks

**Tax Map Key:** (3) 5-9-006:009

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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.

AUG 28 2001

Exhibit A

Mr. Alton M. Oye  
c/o Mr. Klaus D. Conventz  
Baumeister Consulting  
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August 23, 2001

Your farm plan included the following ongoing and proposed agricultural activities:

- (a) ongoing agricultural activities have not produced any income to date, but plantings include the following:
  - i. A mixture of approximately 100 Manila and Phoenix palms for sale to resorts, homeowners, and landscaping contractors when trees are about 3-4 years old;
  - ii. A mixture of approximately 50 Manila and Phoenix palms permanently planted for seed stock;
  - iii. Approximately 200 aloe plants for eventual sale in a variety of markets.
- (b) Proposed agricultural activities include the following:
  - i. Construction of a 1,000 square foot shade house to be used for the propagation of approximately 1,500 ornamentals including several varieties of oleander, mock oranges, and a variety of bougainvillea for sale to resorts, homeowners, and landscaping contractors;
  - ii. Approximately 50 mango trees to be started from mature trees situated on the property will be sold when about 15-gallon sized;
  - iii. Propagation and maintenance of approximately 70 Singapore Plumeria trees with an average of 50 tree sales per year after the first year to golf courses, resorts, homeowners, and landscaping contractors;
  - iv. Approximately 5,000 square feet of the property to be planted in pikake, stephanotis, and bougainvillea with anticipated sales to resorts, golf courses, homeowners, and landscaping contractors resulting in a continuous stock of approximately 3,000 plants after 24 months;
  - v. Planting of a 40-tree commercial mango orchard on approximately 36,000 square feet of the property with an anticipated annual harvest of about 12,000 lbs. of fruit after 4-5 years.

Mr. Alton M. Oye  
c/o Mr. Klaus D. Conventz  
Baumeister Consulting  
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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)
2. The subject lot was created by subdivision (SUB 5875) approved on March 19, 1990, 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 30104625), and the agreement to use the dwelling for agricultural or farm-related activity on the building site demonstrate that income derived from agricultural activity on the building site will be taxed.
4. In addition, the following agencies have submitted their comments as stated below:
  - (a) Department of Water Supply (Letter dated June 18, 2001):

“We have reviewed the subject application and have the following information.

The property does not have an existing water service with the Department as the parcel receives its water from a private water system.

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

Mr. Alton M. Oye  
c/o Mr. Klaus D. Conventz  
Baumeister Consulting  
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(b) Real Property Tax Office (Memorandum dated June 14, 2001):

“There are no rollback tax consequences.

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

(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 farm dwelling is approved subject to the following conditions:

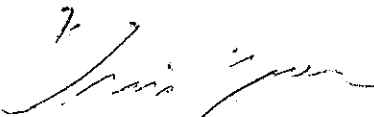
1. The additional farm dwelling shall only be used to provide shelter for persons involved in the agricultural or farm-related activity on the building site. Family members who are not engaged in agricultural or farm-related activities are allowed to reside in the farm dwelling.
2. The agreement shall 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 primarily 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.

Mr. Alton M. Oye  
c/o Mr. Klaus D. Conventz  
Baumeister Consulting  
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5. The First Party shall allow the Second Party or its representative to inspect the farm upon reasonable prior notice.
6. Pursuant to the Hawaii County Code, building permits shall be secured for all structures, including, but not limited to, the two (2) 10,000-gallon water storage tanks, situated on the subject parcel prior to approval of a building permit for this additional farm dwelling.
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 29, 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:cps  
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Enclosure

xc: Mr. Milton Pavao, DWS  
Mr. Mike McCall, RPT  
Planning Dept. - Kona Office

STATE OF HAWAII  
BUREAU OF CONVEYANCES  
Land & Natural Resources  
NLY

DATE: 10/12/2001 09:30  
RCPT: R00204  
FROM: CONVENTZ  
JOB:

RS FEE	2001-161314	25.00
		-----
	TOTAL	25.00
	CHECK	25.00
		-----
	CHANGE	0.00

R-765

STATE OF HAWAII  
BUREAU OF CONVEYANCES  
RECORDED

OCT 12, 2001 09:30 AM

Doc No(s) 2001-161314

/s/CARL T. WATANABE  
ACTING  
REGISTRAR OF CONVEYANCES

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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: ALTON M. OYE, PETER G. BANKS and KERRY I. BANKS**

**SECOND PARTY: COUNTY OF HAWAII**

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PROPERTY DESCRIPTION:

**TMK: (3) 5-9-006:009**

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ADDITIONAL FARM DWELLING AGREEMENT

THIS AGREEMENT made and executed this 29th day of June, 2001, by and between ALTON M. OYE, PETER G. BANKS and KERRY I. BANKS herein called the "First Party," whose mailing address is P.O. Box 205, Kamuela, Hawaii 96743, 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) 5-9-006:009 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.

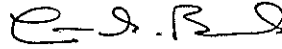
IN CONSIDERATION OF THE AFORESAID, the Second Party hereby approves this Agreement as being in conformity with Sections 205-2 and 205-4.5 of the Hawaii Revised Statutes, relative to permitted uses within the State Land Use Agricultural district. This Agreement is also in conformance with Chapter 25,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

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

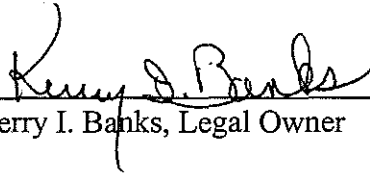
FIRST PARTY:



Alton M. Oye, Legal Owner

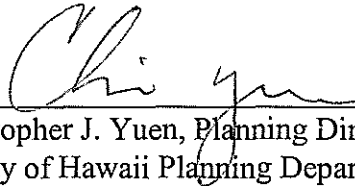


Peter G. Banks, Legal Owner



Kerry I. Banks, Legal Owner

SECOND PARTY:



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

STATE OF HAWAII )  
 ) SS.  
COUNTY OF HAWAII )

On this 2<sup>th</sup> day of July, 2001 before me personally appeared ALTON M. OYE, ~~PETER G. BANKS and KERRY I. BANKS~~ <sup>NPLG</sup> to me known to be the person(s) described in and who executed the foregoing instrument, and acknowledged that <sup>he</sup> ~~they~~ executed the same as <sup>his</sup> ~~their~~ free <sup>NPLG</sup> act and deed.

Elaine R.N. Yamamoto  
Notary Public, State of Hawaii ELAINE R. N. YAMAMOTO

My commission expires: 11-20-2001

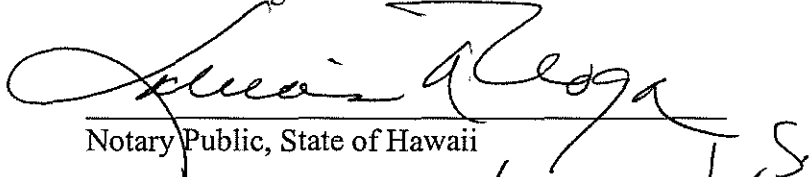
State of Hawaii )  
County of Hawaii ) SS.  
On this 3<sup>rd</sup> day of August, <sup>2001</sup> ~~19~~, <sup>NPLG</sup> before me personally appeared Peter G. Banks and Kerry I. Banks to me known to be the person(s) described in and who executed the foregoing instrument, and acknowledged that they executed the same as their free act and deed.

Elaine R.N. Yamamoto  
Notary Public, III Judicial Circuit ELAINE R. N. YAMAMOTO  
My Commission expires: 11-20-2001

STATE OF HAWAII            )  
  ) SS  
COUNTY OF HAWAII        )

On this 2nd 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 VS

