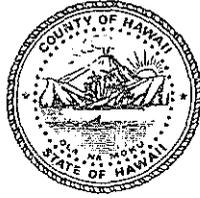


Harry Kim
Mayor



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

June 15, 2001

Mr. and Mrs. Gary L. Smallwood
P.O. Box 682
Captain Cook, Hawaii 96704

Dear Mr. and Mrs. Smallwood:

Additional Farm Dwelling Agreement

Applicants: Gary L. Smallwood and Linda K. Meyer-Smallwood

Land Owners: Gary L. Smallwood and Linda K. Meyer-Smallwood

Tax Map Key: (3) 8-2-001:127

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, or will include, 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.
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:

000611

Exhibit A

- (a) Approximately 840 existing coffee trees that produced 12,000 pounds of coffee cherry for the season ending February 2001.
 - (b) Proposed planting of approximately another 760 coffee trees over the next two (2) years, bringing the total coffee orchard to approximately 1,600 trees, with an estimated annual gross income of \$74,000 at full maturity.
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 Farm Plan, GE Tax License (ID number 30118615), 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 (Memorandum dated May 8, 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 is beyond the service limits of the Department's existing water system. Further, the property is at an elevation beyond the pressure service limits of the system.

Mr. and Mrs. Gary L. Smallwood
Page 3
June 15, 2001

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

(b) Real Property Tax Office:

No comments were submitted.

(c) Department of Health (Memorandum dated May 8, 2001):

“The proposed Septic Tank System would need to be designed by a Registered Professional Engineer licensed by the State of Hawaii. Please submit the plans to the Wastewater Branch in Kona for approval.”

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.
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 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. and Mrs. Gary L. Smallwood

Page 4

June 15, 2001

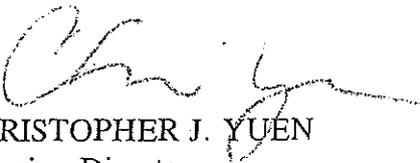
5. The First Party shall allow the Second Party or its representative to inspect the farm upon reasonable prior notice.
6. This Additional Farm Dwelling Agreement shall be valid for a period of two (2) years from the date of this approval letter to secure a building permit for the additional farm dwelling. Failure to secure a building permit for this additional farm dwelling on or before June 1, 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.

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

\\PLANNING-SERVER\PUBLIC\WPWIN60\Larry\FDA\Smallwood 8-2-1-127 apvl.doc

Enclosure.

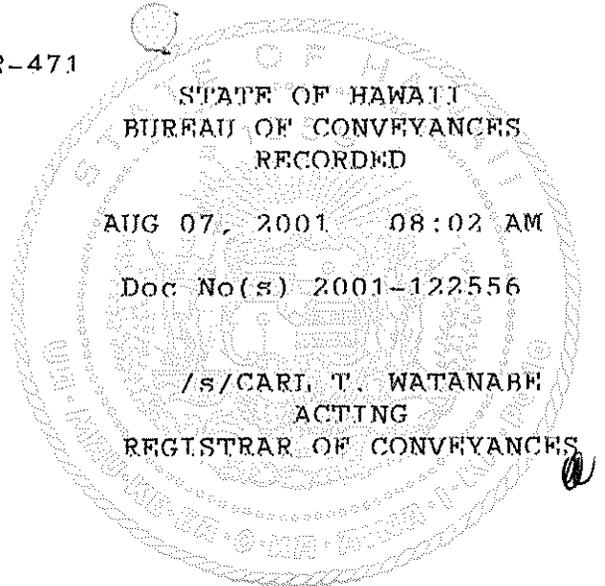
Exhibit A

Mr. and Mrs. Gary L. Smallwood
Page 5
June 15, 2001

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

Exhibit A

R-471



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: GARY L. SMALLWOOD
LINDA K. MEYER-SMALLWOOD**

SECOND PARTY: COUNTY OF HAWAII

PROPERTY DESCRIPTION:

TMK: (3) 8-2-001:127

ADDITIONAL FARM DWELLING AGREEMENT

THIS AGREEMENT made and executed this 14TH day of June, 2001, by and between GARY L. SMALLWOOD and LINDA K. MEYER-SMALLWOOD herein called the "First Party," whose mailing address is P.O. Box 682, Captain Cook, Hawaii 96704, 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) 8-2-001:127 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.

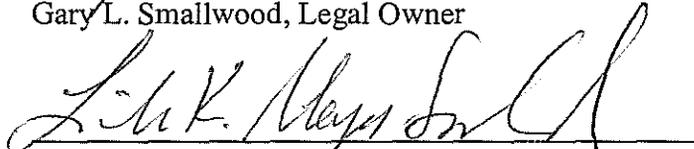
IN CONSIDERATION OF THE AFORESAID, the Second Party hereby approves this Agreement as being in conformity with Sections 205-2 and 205-4.5 of the Hawaii Revised Statutes, relative to permitted uses within the State Land Use Agricultural district. This Agreement is also in conformance with Chapter 25,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

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

FIRST PARTY:

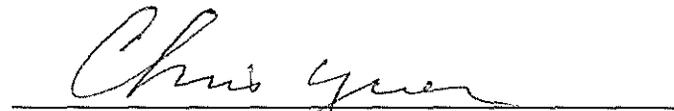
Handwritten signature of Gary L. Smallwood in cursive script, written over a horizontal line.

Gary L. Smallwood, Legal Owner

Handwritten signature of Linda K. Meyer-Smallwood in cursive script, written over a horizontal line.

Linda K. Meyer-Smallwood, Legal Owner

SECOND PARTY:

Handwritten signature of Christopher J. Yuen in cursive script, written over a horizontal line.

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

STATE OF HAWAII)
) SS.
COUNTY OF HAWAII)

On this 16th day of July, 2001 before me personally appeared GARY L. SMALLWOOD and LINDA K. MEYER-SMALLWOOD 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.

Alma Kato Flores Kalino
Notary Public, State of Hawaii

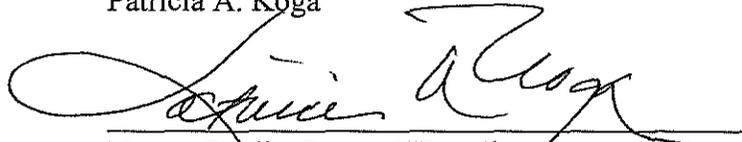
My commission expires: 10/29/2003

b

STATE OF HAWAII)
) SS
COUNTY OF HAWAII)

On this 2nd 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 *L.S.*

TMK: 8-2-01-127

SCALE: 1 inch = 100 feet

