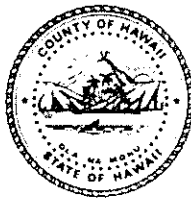


Harry Kim
Mayor



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

November 30, 2001

Mr. Ronald S. H. Toms
Leigh Barker
Linda Toms-Barker
1660 Haleloke Street
Hilo, Hawaii 96720

Dear Mr. Toms:

Additional Farm Dwelling Agreement

Applicants: Ronald S. H. Toms, Leigh Barker, and Linda Toms-Barker

Land Owners: Ronald S. H. Toms, Leigh Barker, and Linda Toms-Barker

Tax Map Key: (3) 2-5-058:027

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

Exhibit A

Mr. Ronald S. H. Toms
Leigh Barker
Linda Toms-Barker
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dwelling is needed in connection with the agricultural productivity or farming operation. Your farm plan included the following ongoing and proposed income producing agricultural activities:

- (a) There are no ongoing agricultural activities;
 - (b) Proposed agricultural activities include the following:
 - i. The planting of approximately 64 green bean plants generating approximately \$3,300 annually;
 - ii. The planting of approximately 900 orchids and other ornamentals generating approximately \$3,200 annually; and
 - iii. The planting of an unspecified number of Norfolk Island pines to sustain an average of 3 trees sold per year generating about \$750 annually.
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 3987) approved on July 29, 1977, 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 30125280), and the agreement to use the

Mr. Ronald S. H. Toms
Leigh Barker
Linda Toms-Barker
Page 3
November 30, 2001

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 November 19, 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 Haleloke Street, which fronts the subject parcel.

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 as is the existing service.
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, which are subject to change, to our Customer Service Section:
 - a. Facilities Charge (One 2nd service at \$4,350.00 each) \$4,350.00

Mr. Ronald S. H. Toms
Leigh Barker
Linda Toms-Barker
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b. Service Lateral Installation Charge (Install one meter on Haleloke Street, a County road)	<u>2,250.00</u>
Total (Subject to Change)	\$6,600.00

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

(b) Real Property Tax Office (Memorandum dated November 14, 2001):

"There are no comments at this time.

Real Property taxes are paid through December 31, 2001."

(c) Department of Health (Memorandum dated November 15, 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.

Mr. Ronald S. H. Toms
Leigh Barker
Linda Toms-Barker
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November 30, 2001

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 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 November 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:mad
P:\WPWIN60\Larry\AFDA\Toms 2-5-58-27 apvl.doc

Enclosure: AFDA document
AFDA document instructions

xc: Mr. Milton Pavao, DWS
Mr. Mike McCall, RPT

R-1006 STATE OF HAWAII
BUREAU OF CONVEYANCES
RECORDED

FEB 22, 2002 01:00 PM

Doc No(s) 2002-032397

/s/ CARL T. WATANABE
ACTING
REGISTRAR OF CONVEYANCES

030

nk

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: RONALD S. H. TOMS, LEIGH BARKER,
and LINDA TOMS-BARKER**

SECOND PARTY: COUNTY OF HAWAII

PROPERTY DESCRIPTION:

TMK: (3) 2-5-058:027

ADDITIONAL FARM DWELLING AGREEMENT

THIS AGREEMENT made and executed this 29th day of November, 2001, by and between RONALD S. H. TOMS, LEIGH BARKER, and LINDA TOMS-BARKER, herein called the "First Party," whose mailing address is 1660 Haleloke Street, Hilo, Hawaii 96720, 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) 2-5-058:027 situated within the State Land Use Agricultural district and zoned Agricultural (A-1a) 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.

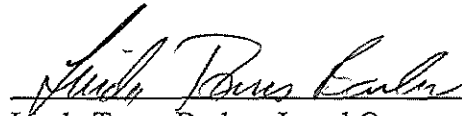
FIRST PARTY:



Ronald S. H. Toms, Legal Owner

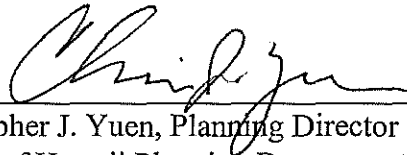


Leigh Barker, Legal Owner



Linda Toms-Barker, Legal Owner

SECOND PARTY:



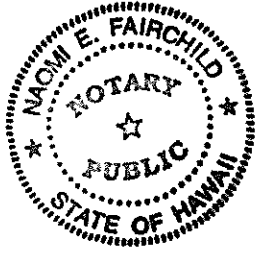
Christopher J. Yuen, Planning Director
County of Hawaii Planning Department

STATE OF HAWAII)
) SS.
COUNTY OF HAWAII)

On this 6th day of February, 2002 before me personally appeared RONALD S. H. TOMS, LEIGH BARKER, and LINDA TOMS-BARKER to me known to be the person described in and who executed the foregoing instrument, and acknowledged that she executed the same as her free act and deed.

Naomi E. Fairchild

Notary Public, State of HAWAII
Naomi E. Fairchild

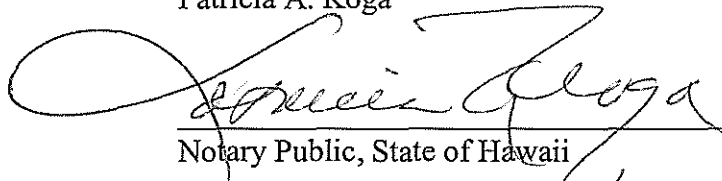


My commission expires: Jan. 30, 2005

STATE OF HAWAII)
) SS
COUNTY OF HAWAII)

On this 13th day of February, 2002 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.

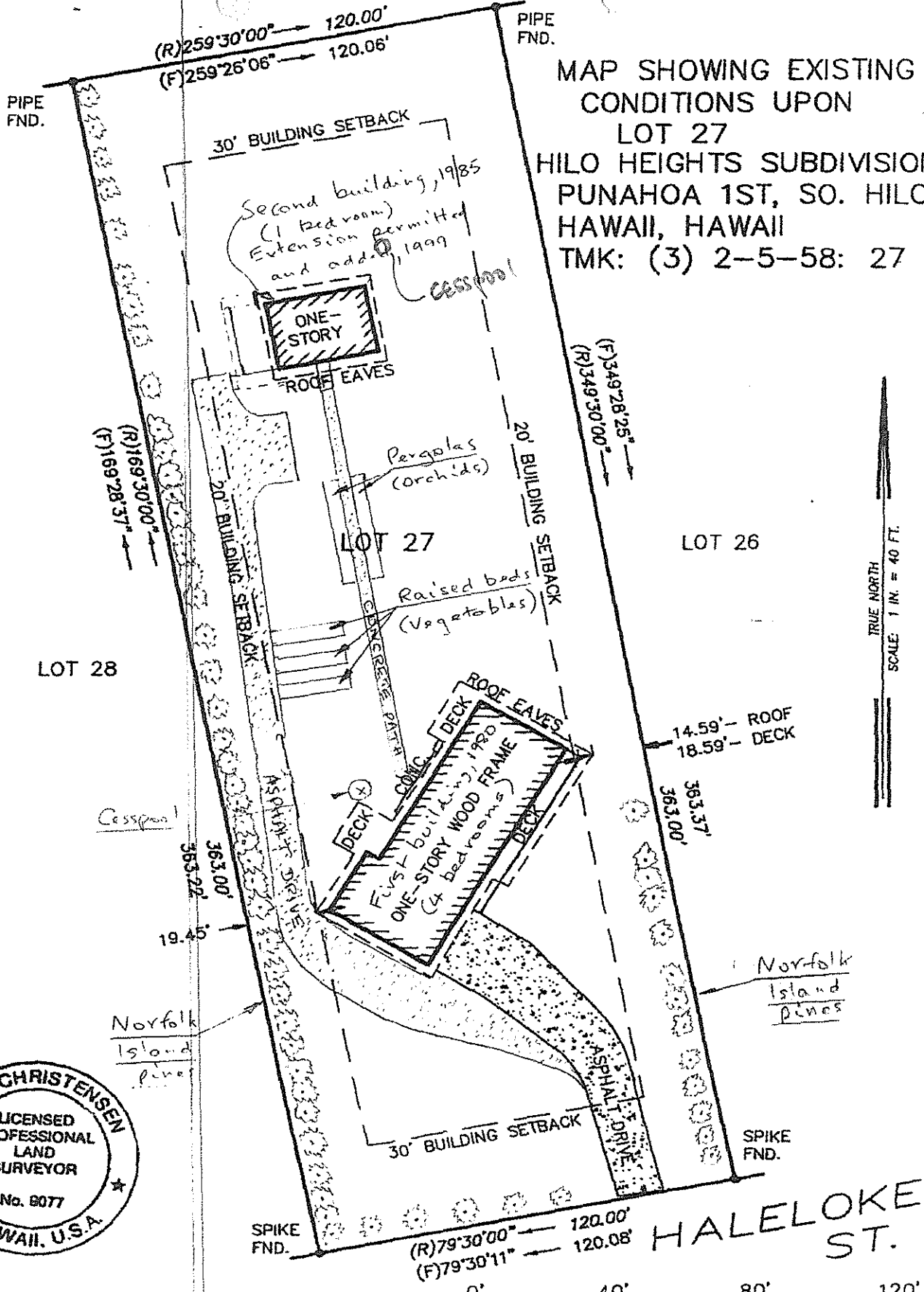
Patricia A. Koga



Notary Public, State of Hawaii

My commission expires: 7/17/02 VS

MAP SHOWING EXISTING
CONDITIONS UPON
LOT 27
HILO HEIGHTS SUBDIVISION
PUNAHOA 1ST, SO. HILO
HAWAII, HAWAII
TMK: (3) 2-5-58: 27



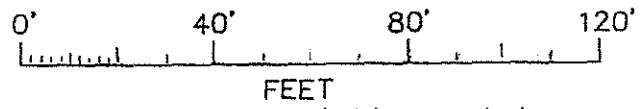
TRUE NORTH
SCALE: 1 IN. = 40 FT.



This work was prepared by me
or under my direct supervision

NOTES:

- The features shown hereon were located by an actual field survey performed on October 7, 1999.



HALELOKE ST.