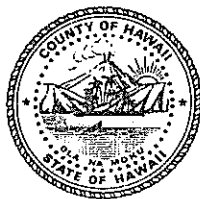


Harry Kim  
Mayor



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

May 10, 2002

W. Augustus Elliott  
Kyoko Elliott  
P.O. Box 910  
Honokaa, Hawaii 96727

Dear Mr. & Mrs. Elliott:

**SUBJECT: Additional Farm Dwelling Agreement**

**Applicants: W. Augustus Elliott and Kyoko Elliott**

**Land Owners: W. Augustus Elliott and Kyoko Elliott**

**Tax Map Key: (3) 4-4-008:071**

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. Your farm plan included the following ongoing and proposed income producing

Exhibit A

MAY 13 2002

agricultural activities:

1. No ongoing agricultural activities were listed.
2. Proposed agricultural activities include the planting of approximately 600 coffee trees on 26,000 square feet of the subject property.
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 prior to June 4, 1976, which, pursuant to HRS §205-4.5(b), allows the first dwelling on the lot to be used as a single-family dwelling.
3. The Farm Plan, GE Tax License (ID number 30122922), 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 April 9, 2002):

“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.

W. Augustus Elliott  
Page 3  
May 10, 2002

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."

(b) Real Property Tax Office (Memorandum dated May 7, 2002):

"Property is receiving agricultural use value.

Real Property taxes are paid for each CPR UNIT through June 30, 2002."

(c) Department of Health (Memorandum dated March 22, 2002):

"The subject lot(s) are located in a Non-Critical Wastewater Disposal Area where cesspools are allowed under the current rules. More than one cesspool is allowed provided 10,000 sq. ft. per cesspool is available. Each cesspool can dispose of 1,000 gallons per day of wastewater."

Decision:

In view of the above, your request to construct a 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. Family members who are not engaged in agricultural or farm-related activities are allowed to reside in the farm dwelling.

W. Augustus Elliott

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May 10, 2002

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. The enclosed Additional Farm Dwelling Agreement must be returned to the Planning Department with the appropriate notarized signatures along with a check made out to the Bureau of Conveyances in the amount of \$25.00 in accordance with the enclosed Additional Farm Dwelling Agreement Instructions. The Planning Department will not approve a building permit application for the additional dwelling until the AFDA document and all required attachments have been accepted for recordation.
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 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 May 10, 2004 may cause the Director to initiate proceedings to invalidate the AFDA.

In reference to the Department of Water Supply's comment, 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

W. Auguztus Elliott  
Page 5  
May 10, 2002

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:mad

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Enclosure: AFDA document  
AFDA document instruction sheet

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



R-1016 STATE OF HAWAII  
BUREAU OF CONVEYANCES  
RECORDED  
APR 07, 2003 08:02 AM  
Doc No(s) 2003-063792



/s/ CARL T. WATANABE  
REGISTRAR OF CONVEYANCES

20 1/1 Z6

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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: W. AUGUZTUS ELLIOTT and KYOKO ELLIOTT**

**SECOND PARTY: COUNTY OF HAWAII**

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PROPERTY DESCRIPTION:

**TMK: (3) 4-4-008:071**

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ADDITIONAL FARM DWELLING AGREEMENT

THIS AGREEMENT made and executed this 10<sup>th</sup> day of May, 2002, by and between W. AUGUZTUS ELLIOTT and KYOKO ELLIOTT, herein called the "First Party," whose mailing address is P.O. Box 910, Honokaa, Hawaii 96727, and the COUNTY OF HAWAII, herein called the "Second Party."

IT IS HEREBY AGREED that the First Party may construct a second farm dwelling located on the property described by Tax Map Key (3) 4-4-008:071 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.

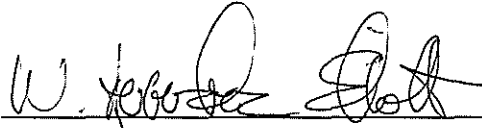
IT IS HEREBY FURTHER AGREED that if the property is situated within the State Land Use Agricultural district, the Second Party may impose a fine of not more than \$5,000 for violation of Section 205-4.5, Hawaii Revised Statutes. If the violation is not corrected within six months of such citation and 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.

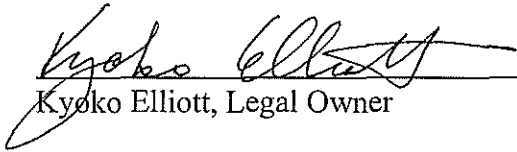


IN WITNESS WHEREOF, the parties have executed this agreement on the day and year first above written.

FIRST PARTY:

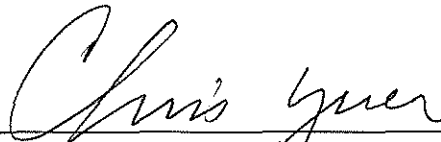


W. Augustus Elliott, Legal Owner



Kyoko Elliott, Legal Owner

SECOND PARTY:



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

STATE OF HAWAII )  
 ) SS.  
COUNTY OF HAWAII )

On this 10<sup>th</sup> day of February, 2002 before me personally appeared W. AUGUZTUS ELLIOTT and KYOKO ELLIOTT to me known to be the person described in and who executed the foregoing instrument, and acknowledged that they executed the same as their free act and deed.

L/S

Joycelyn F. Embernate  
Notary Public, State of Hawaii

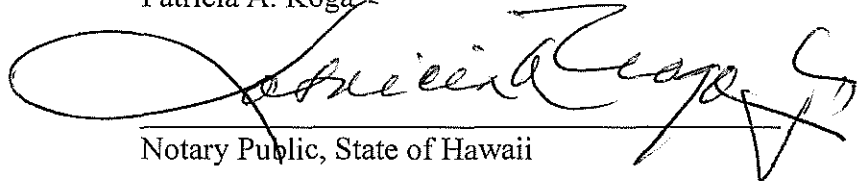
JOYCELYN F. EMBERNATE

My commission expires: 12-19-06

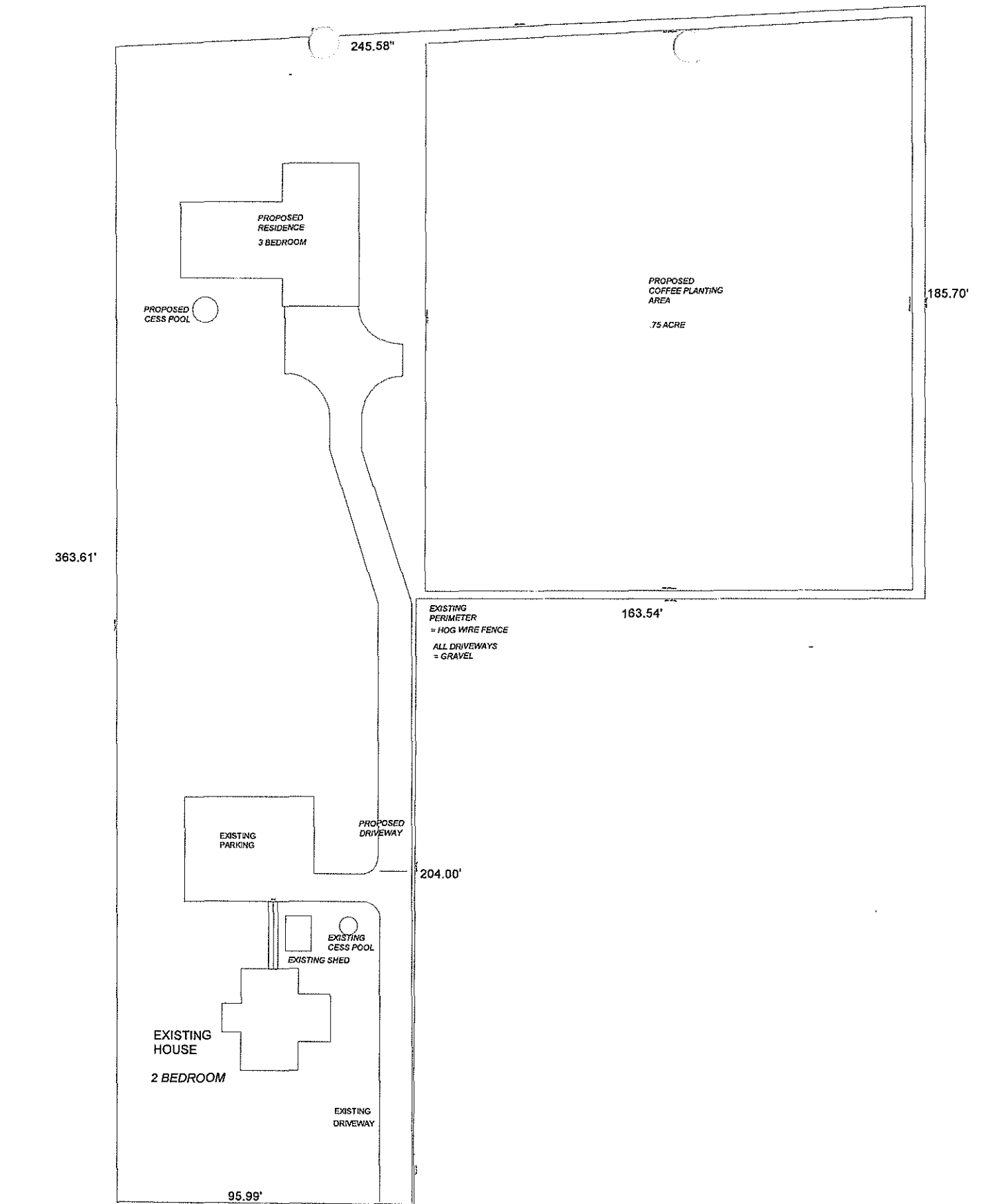
STATE OF HAWAII            )  
  ) SS  
COUNTY OF HAWAII        )

On this 26<sup>th</sup> day of February, 2003 *pub. 17* 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: 07/17/06



Kalaniai Road

Growsalot Farm  
 TMK: 3-4-4-08:71

Elliott