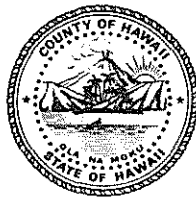


Harry Kim
Mayor



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 27, 2002

Mr. Eric Jaeger
P.O. Box 935
Captain Cook, Hawaii 96704

Dear Mr. Jaeger:

Additional Farm Dwelling Agreement

Applicant: Eric Jaeger

Land Owner: Eric Jaeger and Ilza Jaeger

Tax Map Key: (3) 8-1-023:001

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 **two additional farm dwellings** on the subject property. Your submittals included the following information:

1. A notarized affidavit that the additional dwellings 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.

Exhibit A

Mr. Eric Jaeger
Page 2
August 27, 2002

4. A farm plan or evidence of the applicant's continual agricultural productivity or farming operation within the County, including an explanation of why the additional farm dwellings are needed in connection with the agricultural productivity or farming operation. Your farm plan included the following ongoing and proposed income producing agricultural activities:
 - (a) Ongoing agricultural activities include the following, which, according to your GE Tax Returns for 1999 through 2001, has generated an average of \$10,460.00 annually:
 - i. Approximately 2.25 acres are partially planted in protea producing the equivalent of approximately $\frac{3}{4}$ -acres; and
 - ii. The following fruit trees on approximately 2.3-acres of the subject property;
 - 12 Macadamia trees
 - 20 Banana plants
 - 10 Avocado trees
 - 5 Mango trees
 - 1 Lychee tree
 - 1 Cheramoya tree
 - (b) Proposed agricultural activities include the following:
 - i. Replanting of the existing 1.5-acres in protea; and
 - ii. Planting of an additional $\frac{3}{4}$ -acres in protea.
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 4555) approved on November 25, 1980, which, pursuant to HRS §205-4.5(b), requires that the first dwelling on the lot shall be a farm dwelling.
3. The Farm Plan, GE Tax License (ID number 30044077), and the agreement to use the dwellings for agricultural or farm-related activity on the building site demonstrate that there is income producing agricultural activity and the income is being taxed.
4. In addition, the following agencies have submitted their comments as stated below:
 - (a) Department of Water Supply (Letter dated July 26, 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. This application is proposing a third and fourth additional detached dwelling; therefore, the existing 5/8-inch meter shall be cut and plugged at the main and a new 1-inch meter with 3 units of water shall be installed in accordance with Department regulations. It is the Department's understanding that one of the dwellings will be demolished at the end of August 2002.

Mr. Eric Jaeger
Page 4
August 22, 2002

Water is available from the 6-inch waterline in Haku Nui Road, approximately 1,050 feet from the subject parcel, with a signed "Policy & Conditions for Water Service (Premises not within service limits of the Department)." Lastly, the parcel requires a Departmental Elevation Agreement.

Therefore, the Department has no objections to the proposed application subject to the applicant understanding and accepting the following conditions:

1. Submit a schematic diagram prepared by a licensed engineer in the State of Hawaii to the Department of Water Supply for approval along with the elevation agreement. Copies of the elevation agreement and "Policy & Conditions for Water Service (Premises not within service limits of the Department)" are being forwarded to the applicant.
2. Installation, by the Department of Water Supply, of a second 1¼-inch service lateral to service a 1-inch meter, which shall be restricted to a maximum daily flow of 1,800 gallons per day.
3. Installation of a backflow preventer (reduced pressure type) by a licensed contractor on the applicant's/private 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.
4. Remittance of the following charges, which are subject to change, to our Customer Service Section:

Exhibit A

Mr. Eric Jaeger
Page 5
August 22, 2002

a. Facilities Charge for 1-inch meter with 3 units of water	\$10,875.00
b. Facilities Charge Credit for a 5/8-inch meter	-940.00
c. Temporary Deposit for Service Lateral Installation Charge (Install service lateral on the opposite side of the road for 1-inch meter on Haku Nui Road, a County road)	<u>3,300.00</u>
Total (Subject to Change)	\$13,235.00

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

(b) Real Property Tax Office did not offer any comments.

(c) Department of Health (Memorandum dated July 26, 2002):

“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 **third farm dwelling is approved** subject to the conditions listed below. Your request to construct a **fourth farm dwelling is denied** due to insufficient ongoing income producing agricultural activity. Please feel welcome to reapply for a fourth farm dwelling at such time that the ongoing income producing agricultural activity requires the additional 40 man-hours per week to maintain.

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. The enclosed Additional Farm Dwelling Agreement must be returned to the Planning Department with the appropriate

Exhibit A

Mr. Eric Jaeger
Page 6
August 22, 2002

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 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. 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 August 22, 2004 may cause the Director to initiate proceedings to invalidate the AFDA.

For your information, Section 25-2-20 (a) (d) of the Zoning Code states:

- (a) Any person aggrieved by the decision of the director or the commission in the administration or application of this chapter, except for decisions regarding variance applications and decisions which are directly appealable to the circuit courts under state law, may, within thirty days of the director or commission's written decision, appeal the decision to the board of appeals.

Mr. Eric Jaeger
Page 7
August 22, 2002

(b) An appeal shall be in writing, in the form prescribed by the board of appeals, and shall specify the person's interest in the subject matter of the appeal and the grounds of the appeal. Any such appeal shall be accompanied by a filing fee of \$250. The person appealing a decision of the director or commission shall provide a copy of the appeal to the director or commission, as appropriate, and to the owners of the affected property and shall provide the board of appeals with the proof of service.

A General Petition for Appeal of Decisions by Planning has been enclosed for your convenience.

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

F:\WPWIN60\Larry\FDA\Jaeger 8-1-23-1 apvl-den.doc

Enclosure: AFDA document
AFDA document instruction sheet

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

Exhibit A



R-610 STATE OF HAWAII
BUREAU OF CONVEYANCES
RECORDED
OCT 11, 2002 08:02 AM
Doc No(s) 2002-181503



/s/ CARL T. WATANABE
REGISTRAR OF CONVEYANCES

13 1/1 Z3

AFTER RECORDATION, RETURN BY MAIL TO:

County of Hawaii Planning Department
101 Pauahi Street, Suite 3
Hilo, Hawaii 96720

TITLE OF DOCUMENT:

ADDITIONAL FARM DWELLING AGREEMENT

PARTIES TO DOCUMENT:

FIRST PARTY: ERIC JAEGER and ILZA JAEGER

SECOND PARTY: COUNTY OF HAWAII

PROPERTY DESCRIPTION:

TMK: (3) 8-1-023:001

ADDITIONAL FARM DWELLING AGREEMENT

THIS AGREEMENT made and executed this 22nd day of August, 2002, by and between ERIC JAEGER and ILZA JAEGER, herein called the "First Party," whose mailing address is P.O. Box 935, Captain Cook, Hawaii 96704, and the COUNTY OF HAWAII, herein called the "Second Party."

IT IS HEREBY AGREED that the First Party may construct a third farm dwelling located on the property described by Tax Map Key (3) 8-1-023:001 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 one 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.

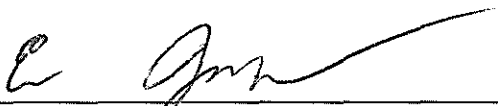
IT IS HEREBY FURTHER AGREED that should the pertinent provisions of the State and County laws and rules and regulations change to authorize said farm dwelling, upon request of the First Party, this Agreement may be reconsidered for possible amendment and/or severance.

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.

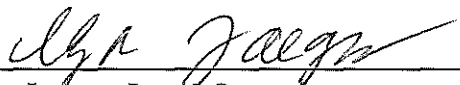
IN CONSIDERATION OF THE AFORESAID, the Second Party hereby approves this Agreement as being in conformity with Sections 205-2 and 205-4.5 of the Hawaii Revised Statutes, relative to permitted uses within the State Land Use Agricultural district. This Agreement is also in conformance with Chapter 25,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

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

FIRST PARTY:




Eric Jaeger, Legal Owner



Ilza Jaeger, Legal Owner

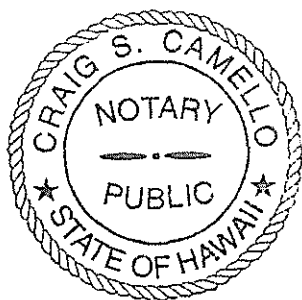
SECOND PARTY:



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

STATE OF HAWAII _____)
) SS.
COUNTY OF HAWAII _____)

On this 11TH day of SEPTEMBER, 2002 before me personally appeared ERIC JAEGER and ILZA JAEGER to me known to be the persons described in and who executed the foregoing instrument, and acknowledged that they executed the same as their free act and deed.



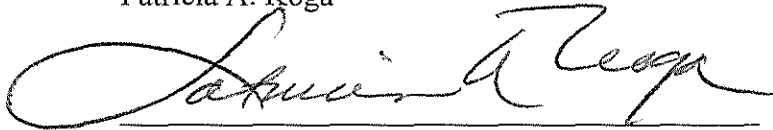
Craig S. Camello
CRAIG S. CAMELLO
Notary Public, State of HAWAII, 3RD CIRCUIT

My commission expires: 5/15/03

STATE OF HAWAII)
) SS
COUNTY OF HAWAII)

On this 5th day of October, 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.

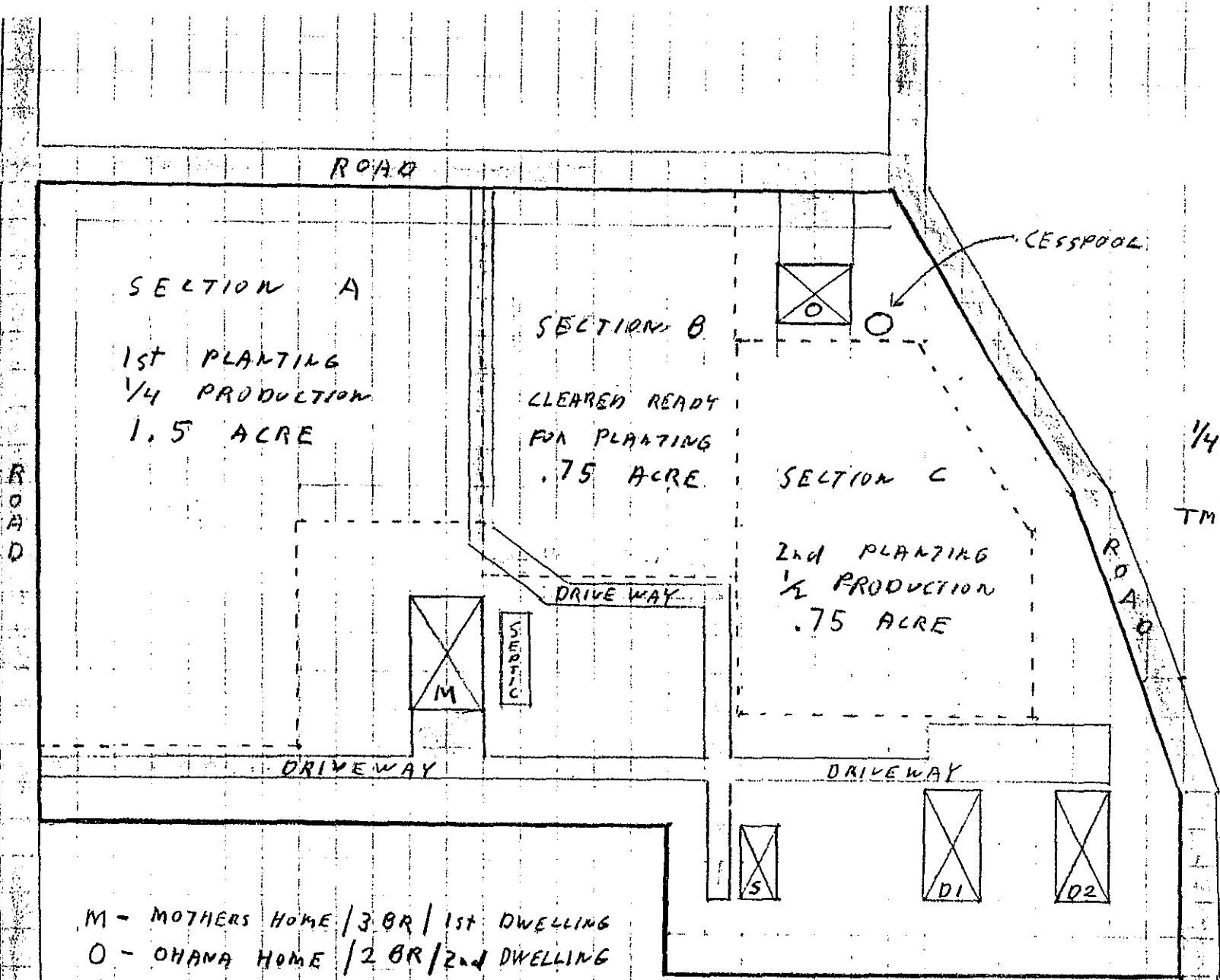
Patricia A. Koga



Notary Public, State of Hawaii

My commission expires:

1/17/06 *VS*



SCALE
1/4" = 20'
TMK 8-1-23-1

- M - MOTHERS HOME / 3 BR / 1st DWELLING
- O - OHAMA HOME / 2 BR / 2nd DWELLING
- S - STORAGE BUILDING
- D1 - PROPOSED ADDITIONAL DWELLING / 4 BR
- D2 - 2nd PROPOSED ADDITIONAL DWELLING / 4 BR