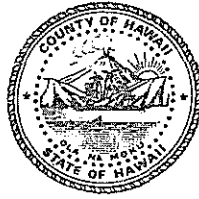


Harry Kim
Mayor



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

July 25, 2002

Ms. Evangeline Komo
75-5407 Mamalahoa Hwy.
Holualoa, Hawaii 96725

Dear Ms. Komo:

Additional Farm Dwelling Agreement

Applicant: Evangeline Komo
Land Owners: Evangeline Komo, Hideo Komo
Kenneth Komo, and Brian Komo
Tax Map Key: (3) 7-5-024:001

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 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 agricultural activities:

Exhibit A

JUL 29 2002

022349

(a) Ongoing agricultural activities include the following:

- i. Approximately 35.5 acres of primarily mature coffee trees;
- ii. Approximately $\frac{3}{4}$ of an acre of mature macadamia nut trees;
- iii. Ten mature avocado trees interspersed among the coffee orchards;
- iv. Approximately $\frac{3}{4}$ of an acre in various ornamental trees and flowers; and
- v. Animal husbandry consisting of various breeds of canines, birds, tropical fish, and pigs primarily for sale as pets.

(b) Proposed agricultural activities include the following:

- i. Replanting of approximately 1.5 acres in giant heliconas, ginger, lauhala, and aloe; and
- ii. Approximately four additional acres to be planted in heliconas, ginger, and several varieties of ti leaves.

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 990) approved on March 5, 1956, 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 30039792), and the agreement to use the dwelling 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 1, 2002):

"We have reviewed the subject application and have the following comments.

For your information, two existing 5/8-inch meters service this property and are adequate for only two dwellings at 600 gallons per day (gpd). 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 8-inch waterline in Mamalahoa Highway, 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. Comply with the condition stated in the Fifth Additional Farm Dwelling Agreement dated June 28, 2001, to install a backflow preventer for Account No. 880-70500.
2. Installation, by the applicant, of a 1-inch service lateral to service a 5/8-inch meter, which shall be restricted to a maximum daily flow of 600 gpd. The following are the fees for services provided by the Department: \$75.00 to drop in the meter, and a temporary deposit of \$100.00 for the tapping of the water main.
3. 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.

Ms. Evangeline Komo
Page 4
July 25, 2002

4. Remittance of the following charges, which are subject to change, to our Customer Service Section:

a. Facilities Charge (One 2 nd service at \$4,350.00 each)	\$4,350.00
b. Capital Assessment Fee	500.00
c. Service Lateral Installation Charge (Install one meter on Mamalahoa Highway, a County road)	<u>2,250.00</u>
Total (Subject to Change)	\$7,100.00

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

(b) Real Property Tax Office (Memorandum dated June 18, 2002):

“A large parcel with diversified Ag. uses.

Real Property taxes are paid through June 30, 2002.”

(c) Department of Health (Memorandum dated June 18, 2002):

“By current rules, the subject lot is located in a Critical Wastewater Disposal Area. A lot size of five (5) acres or more is required for the use of a cesspool. Only one (1) cesspool per five (5) acres would be allowed on the lot. A septic tank system will be needed if the total number of cesspools exceeds the five (5) acres per cesspool requirement.”

Decision:

In view of the above, your request to construct a sixth (6th) 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. The enclosed Additional Farm

Exhibit A

Ms. Evangeline Komo

Page 5

July 25, 2002

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. The First Party shall allow the Second Party or its representative to inspect the farm upon reasonable prior notice.
5. 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 July 15, 2004 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

\\COH02\PUBLIC\WPWIN60\Larry\FDA\KomoEvangeline 7-5-24-1 apvl.doc

Enclosure: AFDA document
AFDA document instruction sheet

Exhibit A

Ms. Evangeline Komo
Page 6
July 25, 2002

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



R-441 STATE OF HAWAII
BUREAU OF CONVEYANCES
RECORDED
SEP 09, 2002 08:02 AM
Doc No(s) 2002-158601



/s/ CARL T. WATANABE
REGISTRAR OF CONVEYANCES

12 1/1 Z4

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: EVANGELINE KOMO, HIDEO KOMO,
KENNETH KOMO, and BRIAN KOMO**

SECOND PARTY: COUNTY OF HAWAII

PROPERTY DESCRIPTION:

TMK: (3) 7-5-024:001

ADDITIONAL FARM DWELLING AGREEMENT

THIS AGREEMENT made and executed this 15th day of July, 2002, by and between EVANGELINE KOMO, HIDEO KOMO, KENNETH KOMO, and BRIAN KOMO, herein called the "First Party," whose mailing address is 75-5407 Mamalahoa Highway, Holualoa, Hawaii 96725, 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) 7-5-024:001 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 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.

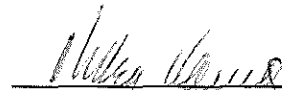
IN CONSIDERATION OF THE AFORESAID, the Second Party hereby approves this Agreement as being in conformity with Sections 205-2 and 205-4.5 of the Hawaii Revised Statutes, relative to permitted uses within the State Land Use Agricultural district. This Agreement is also in conformance with Chapter 25,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

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

FIRST PARTY:



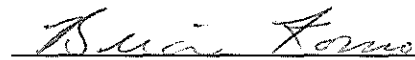
Evangeline Komo, Legal Owner



Hideo Komo, Legal Owner

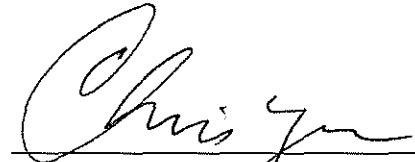


Kenneth Komo, Legal Owner



Brian Komo, Legal Owner

SECOND PARTY:



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

STATE OF HAWAII)
) SS.
COUNTY OF HAWAII)

On this 20 day of August, 2002 before me personally appeared EVANGELINE KOMO, HIDEO KOMO, KENNETH KOMO, and BRIAN KOMO 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.

LS

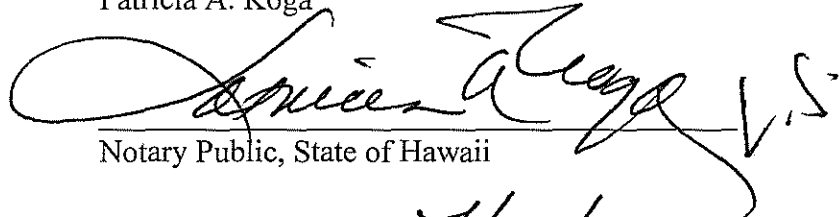
Barbara J. Kossow
Notary Public, State of Hawaii

My commission expires: 11-29-2023

STATE OF HAWAII)
) SS
COUNTY OF HAWAII)

On this 29th day of August, 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.

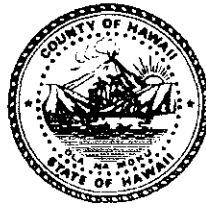
Patricia A. Koga



Notary Public, State of Hawaii

My commission expires: 7/17/02

William P. Kenoi
Mayor



BJ Leithead Todd
Director

Margaret K. Masunaga
Deputy

West Hawai'i Office
74-5044 Ane Keohokalole Hwy
Kailua-Kona, Hawai'i 96740
Phone (808) 323-4770
Fax (808) 327-3563

County of Hawai'i
PLANNING DEPARTMENT

East Hawai'i Office
101 Pauahi Street, Suite 3
Hilo, Hawai'i 96720
Phone (808) 961-8288
Fax (808) 961-8742

November 1, 2011

Mrs. Evangeline Komo
c/o Komo Brothers Partners LLC
75-5324 Māmalahoa Highway
Hōlualoa, Hawai'i 96725

Dear Mrs. Komo:

SUBJECT: Cancellation of Additional Farm Dwelling Agreements (AFDA)
Tax Map Key: (3) 7-5-024:001, Proposed Lot 3 (SUB-10-001017)

Thank you for your inquiry regarding the status of your Additional Farm Dwelling Agreements (AFDA). As you know, this department approved your AFDAs on June 28, 2001, and July 25, 2002. Further, Subdivision Application SUB-10-001017, seeking to divide the subject TMK parcel into Lots 1, 2 and 3, was acknowledged on September 24, 2010.

Per your telephone conversation today with Zoning Clerk Kevin Reardon, the Cancellation of Additional Farm Dwelling Agreements, which was recorded by the Bureau of Conveyances on March 16, 2011, pertains only to the Proposed Lot 3, which will result from the above-referenced subdivision. The AFDAs remain in effect for Proposed Lots 1 and 2. For your reference, enclosed are photocopies of pages 1-3 of the cancellation agreement.

Should you have further questions, please feel welcome to contact Jonathan Holmes of this department at (808) 961-8288 or jholmes@co.hawaii.hi.us.

Sincerely,


BJ LEITHEAD TODD
Planning Director

Mrs. Evangeline Komo
c/o Komo Brothers Partners LLC
November 1, 2011
Page 2

JRH/KWR:kwr

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Enclosure

xc: SUB-10-1017

THE ORIGINAL OF THE DOCUMENT

FILED IN

BOOK

BUREAU OF CONFINANCES

DATE _____ TIME _____

Doc 2011-044331

MAR 16, 2011 01:00 PM

AFTER RECORDATION, RETURN BY MAIL TO:

Planning Department
County of Hawai'i
101 Pauahi Street, Suite 3
Hilo, Hawai'i 96720

TITLE OF DOCUMENT:

CANCELLATION OF ADDITIONAL FARM DWELLING AGREEMENTS

PARTIES TO DOCUMENT:

FIRST PARTY: KOMO BROTHERS LLP

SECOND PARTY: COUNTY OF HAWAI'I

PROPERTY DESCRIPTION:

TMK: (3) 7-5-024:001 (Proposed Lot 3)

CANCELLATION OF AGREEMENTS

THIS CANCELLATION OF AGREEMENTS, made and executed this 14th day of March, 2011, by and between **KOMO BROTHERS LLP**, herein called the "First Party," whose mailing address is 75-5324 Māmalahoa Highway, Hōlualoa, Hawai'i 96725 and the **COUNTY OF HAWAI'I**, herein called the "Second Party,"

WITNESSETH

WHEREAS, on June 28, 2001 and on July 25, 2002 agreements were entered into by and between the predecessor in ownership of the First Party and the Second Party whereby the predecessor in ownership of the First Party was authorized to construct two additional farm dwellings (being the forth and fifth dwellings) on the property described as Tax Map Key (3) 7-5-024:001; and

WHEREAS, the subject area is zoned Agricultural (A-5a) by the County of Hawai'i and classified Agricultural by the State Land Use Commission; and

WHEREAS, the agreements to construct said improvements were duly recorded with the State of Hawai'i Bureau of Conveyances as Document Numbers 2001-139186 and 2002-158601; and

WHEREAS, the property described as Tax Map Key (3) 7-5-024:001 is being subdivided leaving no dwelling on Lot 3; and

WHEREAS, the First Party and the Second Party agree that execution of said agreement should be cancelled for that one (1) lot as there is no longer any valid, compelling reason for it because the subdivision has resulted in no dwelling being located on the property described as Tax Map Key (3) 7-5-024:001 (proposed resultant Lot 3).

NOW, THEREFORE, in consideration of the above recitals and the conditions and covenants contained therein, the parties agree as follows:

The Second Party agrees that the agreements dated June 28, 2001 and on July 25, 2002, recorded at the State of Hawai'i Bureau of Conveyances Document Numbers 2001-139186 and 2002-158601, between the First Party and the Second Party is no longer applicable and that the agreement is hereby declared null and void for only proposed resultant Lot 3.

The Second Party agrees that the agreements dated June 28, 2001 and on July 25, 2002 no longer constitute covenants or encumbrances running with the land as it relates to Tax Map Key (3) 7-5-024:001 (proposed resultant Lot 3).

The First Party agrees to pay for all of the necessary costs and expenditures to record this Cancellation of Agreement.

IT IS MUTUALLY AGREED BY AND BETWEEN the parties that if any additional documents are necessary that they will execute same in order that the agreements dated June 28, 2001 and on July 25, 2002 no longer constitutes an encumbrance on Tax Map Key (3) 7-5-024:001, proposed resultant Lot 3.