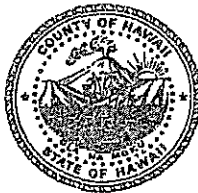


Harry Kim
Mayor



Christopher J. Yuen
Director

Roy R. Takemoto
Deputy Director

County of Hawaii

PLANNING DEPARTMENT

101 Pauahi Street, Suite 3 • Hilo, Hawaii 96720-3043
(808) 961-8288 • Fax (808) 961-8742

December 13, 2002

Mr. Perry A. Miles
Ms. Mary E. Marinaro
RR-2, Box 3962
Pahoa, Hawaii 96778

Dear Mr. Miles and Ms. Marinaro:

Additional Farm Dwelling Agreement


Applicants: Perry A. Miles and Mary E. Marinaro

Land Owners: Perry A. Miles and Mary E. Marinaro

Tax Map Key: (3) 1-4-073:008

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.

1323636

Exhibit A

DEC 17 2002

Mr. Perry A. Miles
Ms. Mary E. Marinaro
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December 13, 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 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:
 - (a) Ongoing agricultural activities include the following:
 - i. Approximately 200 Noni plants on 2 acres producing about 500 lbs. per week of noni;
 - ii. Approximately one acre of native Ohia and Hala trees for sale to local nurseries; and
 - iii. Approximately 450 Kukui Nut trees planted on about ½ acre are currently about 4-years old with mature tree harvests anticipated in another two years.
 - (b) Proposed agricultural activities include the following:
 - i. Development of an aquaculture pond approximately 150' in diameter to raise Koi and Angel Fish.
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)

Mr. Perry A. Miles
Ms. Mary E. Marinaro
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2. The subject lot was created by subdivision (SUB 2069) approved on December 19, 1963, 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 30115360), 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 November 29, 2002):

“We have reviewed the subject application and have the following comments and conditions.

For your information, an existing service lateral for a 5/8-inch meter is available to 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 8-inch waterline in Kapoho Beach Road, approximately 700 feet from the subject parcel (through Parcel 8) with a signed “Policy & Conditions for Water Service (Premises not within service limits of the Department).”

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 per day.

Mr. Perry A. Miles
Ms. Mary E. Marinaro
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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 2 nd service at \$4,350.00 each)	\$4,350.00
b. Service Lateral Installation Charge (Install one meter on Hawi Road, a State 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 submitted no comments.

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

“A septic system will be required for the second dwelling. If you have any questions, please feel free to call our Wastewater Engineer at 933-0401.”

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.

Mr. Perry A. Miles
Ms. Mary E. Marinaro
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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 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 maintain the ongoing agricultural activity and 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 December 11, 2004 may cause the Director to initiate proceedings to invalidate the AFDA.

Mr. Perry A. Miles
Ms. Mary E. Marinaro
Page 6
December 13, 2002

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:cps

P:\WPWIN60\Larry\FDA\Miles&Marinaro 1-4-73-8 apv1.doc

Enclosure: AFDA document
AFDA document instruction sheet

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



R-515

STATE OF HAWAII
BUREAU OF CONVEYANCES
RECORDED
MAR 03, 2003 08:02 AM

Doc No(s) 2003-038297



/s/ CARL T. WATANABE
REGISTRAR OF CONVEYANCES

12 1/1 22

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: PERRY A. MILES and MARY E. MARINARO

SECOND PARTY: COUNTY OF HAWAII

PROPERTY DESCRIPTION:

TMK: (3) 1-4-073:008

ADDITIONAL FARM DWELLING AGREEMENT

THIS AGREEMENT made and executed this 11th day of December, 2002, by and between PERRY A. MILES and MARY E. MARINARO, herein called the "First Party," whose mailing address is RR2, Box 3962, Pahoa, Hawaii 96778, 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) 1-4-073:008 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 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.

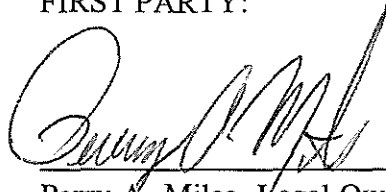
IT IS HEREBY FURTHER AGREED that should the pertinent provisions of the State and County laws and rules and regulations change to authorize said farm dwelling, upon request of the First Party, this Agreement may be reconsidered for possible amendment and/or severance.

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.

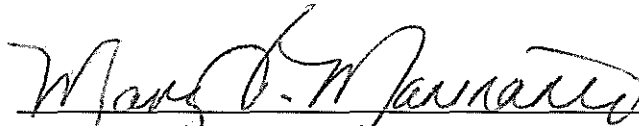
IN CONSIDERATION OF THE AFORESAID, the Second Party hereby approves this Agreement as being in conformity with Sections 205-2 and 205-4.5 of the Hawaii Revised Statutes, relative to permitted uses within the State Land Use Agricultural district. This Agreement is also in conformance with Chapter 25,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

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

FIRST PARTY:

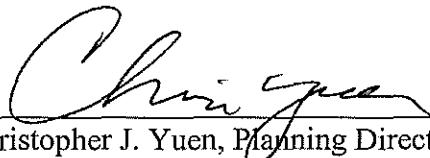


Perry A. Miles, Legal Owner



Mary E. Marjano, Legal Owner

SECOND PARTY:

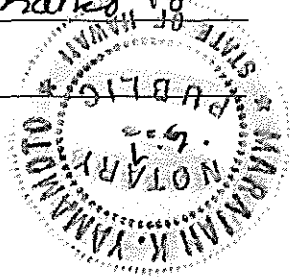


Christopher J. Yuen, Planning Director
County of Hawaii Planning Department

STATE OF HAWAII)
) SS.
COUNTY OF HAWAII)

On this 30th day of December, 2002 before me personally appeared PERRY A. MILES and MARY E. MARINARO 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.

Maraiah K. Yamamoto
Maraiah K. Yamamoto
Notary Public, State of Hawaii

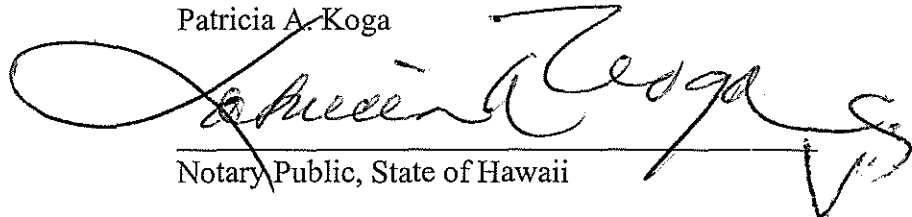


My commission expires: 5 July 2005

STATE OF HAWAII)
) SS
COUNTY OF HAWAII)

On this 4th day of February, 2002^{3 Feb 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

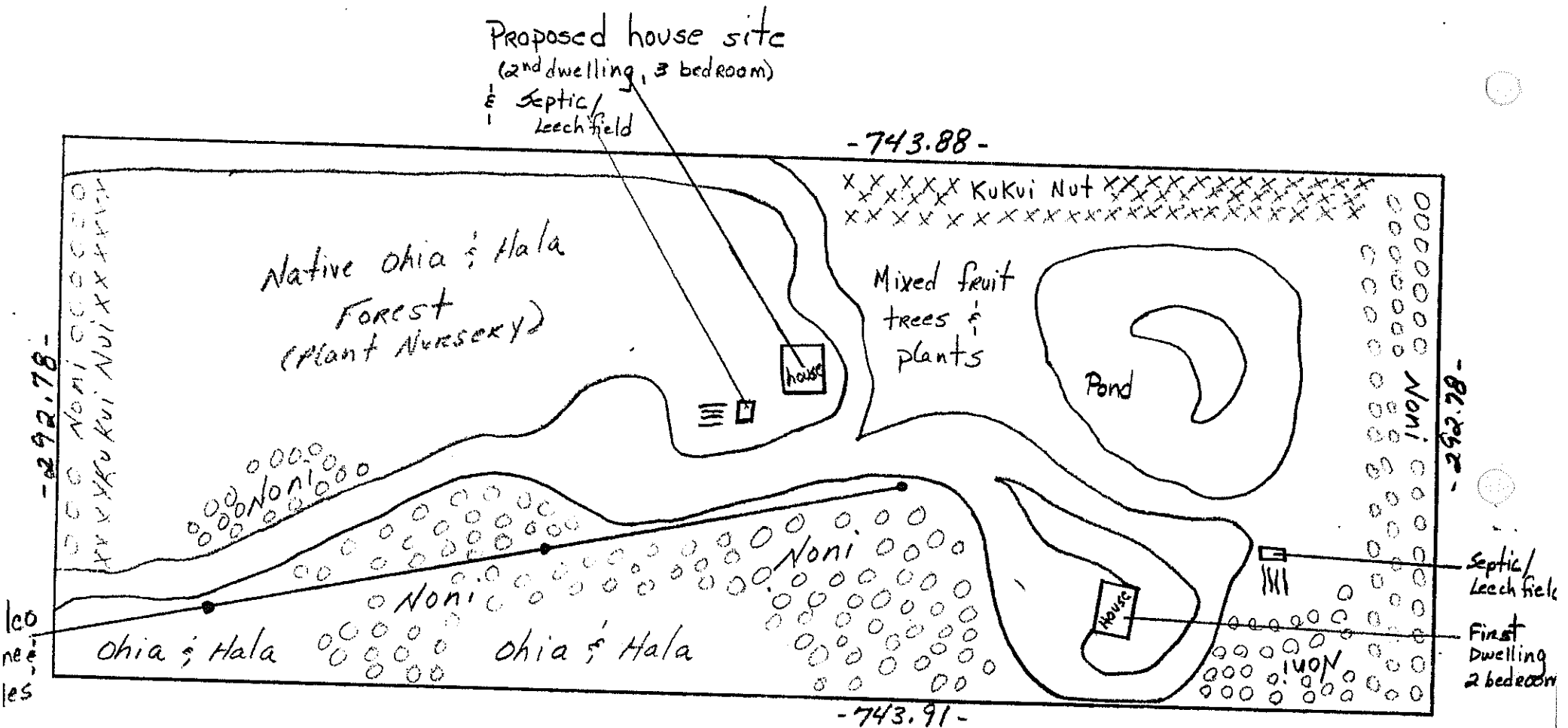


Notary Public, State of Hawaii

My commission expires: 07/17/02

Perry A. Miles / Mary E. Maxinaro
14-4829 Iilani Rd, Kapoho
(RR-2 Box 3962 Pahoa, HI 96778)

TMK 1-4-73-8
5 Acres



Scale: $\frac{1}{4}$ inch = 20 feet