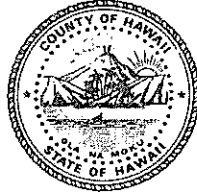


Harry Kim  
Mayor



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 1, 2002

Mr. Klaus D. Conventz  
Baumeister Consulting  
P.O. Box 2308  
Kailua-Kona, Hawaii 96745-2308

Dear Mr. Conventz:

#### **Additional Farm Dwelling Agreement**

**Applicants: Jerry Warren Mitchell and Mathea Joann O'Leary**

**Land Owners: Jerry Warren Mitchell and Mathea Joann O'Leary**

**Patricia M. McTighe-Fujimoto and Drake Satoru Fujimoto**

**Tax Map Key: (3) 9-4-005:047**

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Pursuant to the 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 client's 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. Klaus D. Conventz  
Baumeister Consulting  
Page 2  
May 1, 2002

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 7-acres fenced for cattle pasture with 7 steers for existing livestock; and
    - ii. Approximately 200 gardenias in 5-gallon containers and in-ground nursery stock.
  - (b) Proposed agricultural activities include the following:
    - i. Construction of a 40'x40' shade house for the growing of tomatoes, eggplants, carrots, and gardenia keikis;
    - ii. Fencing of approximately an additional 10 acres as cattle pasture to be stocked with 10 head of cattle;
    - iii. The construction of a storage shed/greenhouse for the growing of bromeliads and ferns.
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. Klaus D. Conventz  
Baumeister Consulting  
Page 3  
May 1, 2002

2. The subject lot was created by subdivision (SUB 6228) approved on December 18, 1992, which, pursuant to HRS §205-4.5(b), requires the first dwelling on the lot to meet the requirements for a farm dwelling.
3. The Farm Plan, GE Tax License (ID number 30086346), 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 March 25, 2002):

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

Our records show that this property does not have an account with the Department and, therefore, does not have water service with us. As this lot was created with a variance from the subdivision water requirements and the applicant indicates in the Additional Farm Dwelling Agreement Application that water will be provided via catchment, the Department has no objections to the proposed application.

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

(b) Real Property Tax Office (Memorandum dated March 21, 2002):

“Property is receiving agricultural use value.

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

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

“The Health Department found no environmental health concerns with regulatory implications in the submittals.”

Mr. Klaus D. Conventz  
Baumeister Consulting  
Page 4  
May 1, 2002

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. 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 primarily 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.

Mr. Klaus D. Conventz  
Baumeister Consulting  
Page 5  
May 1, 2002

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 April 26, 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 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:pak  
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Enclosure: AFDA document  
AFDA document instruction sheet

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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: JERRY WARREN MITCHELL,  
MATHEA JOANN O'LEARY,  
PATRICIA M. MCTIGHE-FUJIMOTO, and  
DRAKE SATORU FUJIMOTO**

**SECOND PARTY: COUNTY OF HAWAII**

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PROPERTY DESCRIPTION:

**TMK: (3) 9-4-005:047**

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ADDITIONAL FARM DWELLING AGREEMENT

THIS AGREEMENT made and executed this 26<sup>th</sup> day of April, 2002, by and between JERRY WARREN MITCHELL, MATHEA JOANN O'LEARY, PATRICIAL M. MCTIGHE-FUJIMOTO, and DRAKE SATORU FUJIMOTO, herein called the "First Party," whose mailing address is 712 North 98<sup>th</sup> Street, Seattle WA 98103, 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) 9-4-005:047 situated within the State Land Use Agricultural district and zoned Agricultural (A-20a) 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.

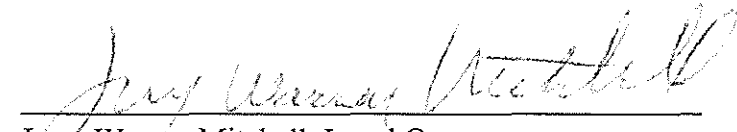
IT IS HEREBY FURTHER AGREED that if the property is situated within the State Land Use Agricultural district, the Second Party may impose a fine of not more than \$5,000 for violation of Section 205-4.5, Hawaii Revised Statutes. If the violation is not corrected within six months of such citation and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

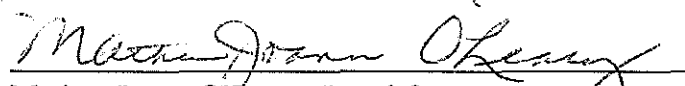
IN CONSIDERATION OF THE AFORESAID, the Second Party hereby approves this Agreement as being in conformity with Sections 205-2 and 205-4.5 of the Hawaii Revised Statutes, relative to permitted uses within the State Land Use Agricultural district. This Agreement is also in conformance with Chapter 25,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




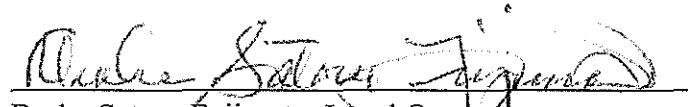
IN WITNESS WHEREOF, the parties have executed this agreement on the day and year first above written.

FIRST PARTY:


  
\_\_\_\_\_  
Jerry Warren Mitchell, Legal Owner

  
\_\_\_\_\_  
Mathea Joann O'Leary, Legal Owner

  
\_\_\_\_\_  
Patricia M. McTighe-Fujimoto, Legal Owner

  
\_\_\_\_\_  
Drake Satoru Fujimoto, Legal Owner

SECOND PARTY:

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

STATE OF WASHINGTON )  
 ) SS  
CITY OF SEATTLE )

On this 23<sup>rd</sup> day of May, 2002 before me personally appeared JERRY WARREN MITCHELL, and MATHEA JOANN O'LEARY 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.

Richard M. Chuate  
Notary Public, State of Washington

My commission expires: 2-5-03

STATE OF HAWAII                    )  
  ) SS  
COUNTY OF HAWAII                )

On this 14<sup>th</sup> day of June, 2002 before me personally  
appeared PATRICIA M. MCTIGHE-FUJIMOTO, and DRAKE SATORU  
FUJIMOTO 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.

Martene K. Welfeld  
Martene K. Welfeld  
Notary Public, State of Hawaii

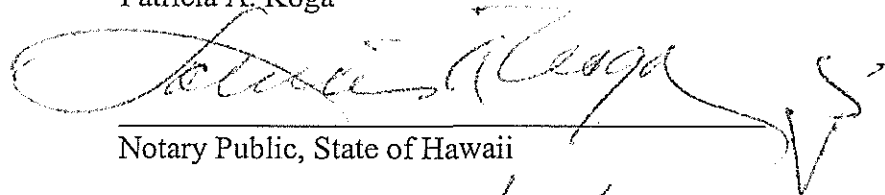
My commission expires: 10/28/2005

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STATE OF HAWAII            )  
  ) SS  
COUNTY OF HAWAII        )

On this 23<sup>rd</sup> day of July, 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

MAP TOO BIG