

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

July 11, 2003

Mr. Jim C. Donahue, Lucky "D" Inc.  
c/o Mr. Klaus D. Conventz  
Baumeister Consulting  
P.O. Box 2308  
Kailua-Kona, Hawaii 96745-2308

Dear Mr. Donahue:

**SUBJECT: Additional Farm Dwelling Agreements**  
**Applicant: Jim C. Donahue, Lucky "D" Inc.**  
**Land Owner: Same**  
**State Land Use: Agricultural**  
**County Zoning: Agricultural (A-8a)**  
**Land Areas: 8.002-acres and 10.648-acres**  
**Tax Map Keys: (3) 7-3-002, 023 and 027**

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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 two requests for additional farm dwellings on the subject properties. 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 Agreements 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 sites 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

**EXHIBIT**

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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. Parcel 23: 4 American Paint and 1 Quarter Horse. Parcel 27: 32 dog and cat kennels with an average of 15 animals at any given time.

(b) Proposed agricultural activities include the following:

- i. Parcel 23: Minimum 3 more horses. Parcel 27: The pasturing of at least 10 head of cattle, and the planting of 300 or more coffee trees.

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, as presently configured, was created by consolidation/resubdivision (SUB 6718) approved on April 10, 1996, which ordinarily, pursuant to HRS §205-4.5(b), would require the first dwelling on the lot to be used as a farm dwelling. However, in this case, the first dwelling (on parcel 23) was constructed prior to the implementation of that requirement so that first dwelling is allowed to be a single-family dwelling. The first dwelling on parcel 27 is to be a farm dwelling as described above.

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3. The Farm Plan, GE Tax License (ID number 30091676), and the agreement to use the dwellings for agricultural or farm-related activity on the building sites 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 June 17, 2003):

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

For your information, an existing 1-inch meter services this property and is adequate for the proposed three (3) additional farm dwellings. Therefore, the Department has no objections to the proposed application subject to the applicant understanding and accepting the following conditions:

1. Installation of a backflow preventer by a licensed contractor on the applicant's property just after the meter. As the existing water service is not fronting the subject parcels, please call the Cross-Connection Section for more information on the location of the backflow preventer. The backflow preventers 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.
2. As the parcels are already covered by an Elevation Agreement with the Department, please submit a schematic diagram indicating how each farm dwelling will receive water service. The schematic diagram shall be prepared by a licensed engineer in the State of Hawaii and submitted to the Department of Water Supply for approval.
3. Remittance of the following charges, which are subject to change, for three additional units of water at 1,800 gallons per day for the three additional farm dwellings, to our Customer Service Section:

• Facilities Charge (\$4,350.00 for each additional unit)	\$13,050.00
• Capital Assessment Fee	<u>1,500.00</u>
Total (Subject to change)	\$14,550.00

For the applicant's information, effective July 1, 2003, the facilities charge will increase to \$5,500 for each additional unit. Therefore the facilities charge total will be \$16,500.00

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and the capital assessment fee will remain the same at \$1,500.00, for a total of \$18,000.

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

(b) Department of Water Supply (Supplemental Letter dated June 25, 2003):

This letter supercedes our memorandum dated June 17, 2003.

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

For your information, an existing 1-inch meter and 5/8-inch meter services this property. The 5/8-inch meter that is currently not being used is adequate for one of the three (3) additional farm dwellings being proposed and the 1-inch meter is adequate for the remaining two (2) additional farm dwellings to be added to.

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

1. Installations of two backflow preventers by a licensed contractor on the applicant's property just after each meter. As the existing water services are not fronting the subject parcels, please call the Cross-Connection Section for more information on the location of the backflow preventers. The backflow preventers shall be operated and maintained by the customer. A copy of our backflow preventer handout was previously forwarded to the applicant to help them understand this requirement.
2. The parcels are already covered by an Elevation Agreement with the Department. However, submit a schematic diagram indicating how each farm dwelling will receive water service. The schematic diagram shall be prepared by a licensed engineer in the State of Hawaii and submitted to the Department of Water Supply for approval.
3. Remittance of the following charges, which are subject to change, for two additional units of water at 1,200 gallons per day for the two additional farm dwellings, to our Customer Service Section:

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• Facilities Charge (\$4,350.00 for each additional unit)	\$8,700.00
• Capital Assessment Fee	<u>1,000.00</u>
Total (Subject to change)	\$9,700.00

For the applicant's information, effective July 1, 2003, the facilities charge will increase to \$5,500 for each additional unit. Therefore the facilities charge total will be \$11,000.00 and the capital assessment fee will remain the same at \$1,000.00, for a total of \$12,000.

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

(c) Real Property Tax Office: Memorandum dated May 9, 2003)

"Property is receiving agricultural use value. Real Property taxes are paid through June 30, 2003 for both parcels."

(d) Department of Health: (Memorandum dated June 3, 2003)

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

Decision:

In view of the above, your request to construct two additional farm dwellings (one on parcel 23 and one dwelling and one AFD on parcel 27, for a total of four dwellings) is approved subject to the following conditions:

1. The additional farm dwellings shall only be used to provide shelter for persons involved in the agricultural or farm-related activity on the building sites. Family members who are not engaged in agricultural or farm-related activities are allowed to reside in the farm dwellings.
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 dwellings. The enclosed Additional Farm Dwelling Agreements must be returned to the Planning Department with the appropriate notarized signatures along with two checks made out to the Bureau of Conveyances in the amount of \$25.00 each in accordance with the enclosed Additional Farm Dwelling

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Agreement Instructions. The Planning Department will not approve any building permit applications for the additional dwellings until the AFDA documents 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, Fire Department and State Department of Health) and other reviewing agencies/divisions listed on the Building Permit Applications.
4. The First Party shall complete all water system improvements necessary to provide water service to the AFD's as may be required by the Department of Water Supply, including, but not limited to, the installation of backflow preventers, prior to occupancy of the dwellings.
5. Your Additional Farm Dwelling Agreements have been approved based on proposed and continuing agricultural activity as summarized previously in this letter. It is required that the First Party (owners and lessees) to the Agreement shall continue the ongoing activity and **shall have implemented at least 75% of the proposed farm plan within three (3) years of approval of the building permits for the additional farm dwellings.** The Second Party (County of Hawaii Planning Department) of the Agreement may allow time extensions and modifications for good cause shown by First Party.
6. The First Party shall allow the Second Party or its representative to inspect the farm upon reasonable prior notice.
7. These Additional Farm Dwelling Agreements 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 June 15, 2005 may cause the Director to initiate proceedings to invalidate the AFDA's.

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Should you have any questions, please feel free to contact Jonathan Holmes of this office at 961-8288.

Sincerely,



CHRISTOPHER J. YUEN  
Planning Director

JRH:mad

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Enclosure: AFDA document  
AFDA document instruction sheet

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

**EXHIBIT**

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R-1131 STATE OF HAWAII  
BUREAU OF CONVEYANCES  
RECORDED  
SEP 29, 2003 09:30 AM  
Doc No(s) 2003-210337



/s/ CARL T. WATANABE  
REGISTRAR OF CONVEYANCES

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AFTER RECORDATION, RETURN BY MAIL TO:

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

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TITLE OF DOCUMENT:

**ADDITIONAL FARM DWELLING AGREEMENT**

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PARTIES TO DOCUMENT:

FIRST PARTY: *JAMES* JIM C. DONAHUE, LUCKY "D" INC.

SECOND PARTY: COUNTY OF HAWAII

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PROPERTY DESCRIPTION:

TMK: (3) 7-3-002:023

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ADDITIONAL FARM DWELLING AGREEMENT

THIS AGREEMENT made and executed this 21st day of April, 2003, by and between ~~JEM~~ <sup>JAMES</sup> <sup>MDM</sup> <sup>NP</sup> C. DONAHUE, LUCKY "D" INC., herein called the "First Party," whose mailing address is 73-4183 D Mamalahoa Highway, Kailua-Kona, Hawaii 96740, 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) 7-3-002:023 situated within the State Land Use Agricultural district and zoned Agricultural (A-8a) 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.

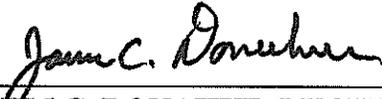
IT IS HEREBY FURTHER AGREED that should the pertinent provisions of the State and County laws and rules and regulations change to authorize said farm dwelling, upon request of the First Party, this Agreement may be reconsidered for possible amendment and/or severance.

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.

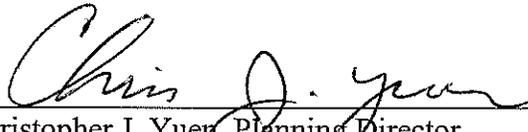
IN CONSIDERATION OF THE AFORESAID, the Second Party hereby approves this Agreement as being in conformity with Sections 205-2 and 205-4.5 of the Hawaii Revised Statutes, relative to permitted uses within the State Land Use Agricultural district. This Agreement is also in conformance with Chapter 25,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

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

FIRST PARTY:

*W. P.*  
*JAMES*  
  
\_\_\_\_\_  
JAMES C. DONAHUE, LUCKY "D" INC., Legal Owner

SECOND PARTY:

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

STATE OF HAWAII

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) SS.

COUNTY OF HAWAII

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On this 21<sup>st</sup> day of AUGUST, 2003 before me personally  
 appeared <sup>JAMES</sup> ~~J.M.C.~~ DONAHUE, LUCKY "D" INC. 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.

*mjm  
N.D.*

*Michael Matsukawa*

*L.D.*

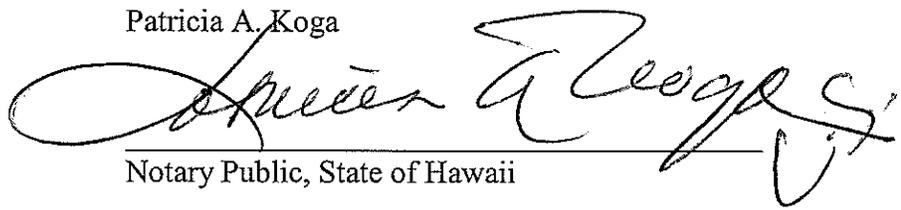
Notary Public, State of HAWAII

*MICHAEL J. MATSUKAWA*

My commission expires: 4-14-2003

STATE OF HAWAII            )  
  ) SS  
COUNTY OF HAWAII        )

On this 22<sup>nd</sup> day of September, 2003 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  
  
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Notary Public, State of Hawaii

My commission expires: 07/17/06

Scanned Map  
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Due to Size

See File

