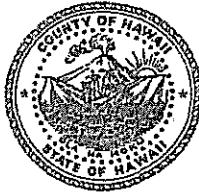


Harry Kim  
Mayor



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

August 20, 2003

Duane Elliott and Melanie Harper  
P.O. Box 1562  
Kapaa, Hawaii 96755

Dear Mr. Elliott and Ms. Harper

**SUBJECT: Additional Farm Dwelling Agreement Application**  
**Applicants: Duane Elliott and Melanie Harper**  
**Land Owners: Duane Elliott and Melanie Harper**  
**State Land Use: Agricultural**  
**County Zoning: Agricultural (A-5a)**  
**Land Area: 6.803-acres**  
**Tax Map Key: (3) 5-5-007:025**

---

Please pardon the delay of this correspondence.

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

**EXHIBIT**

A

1139907  
AUG 21 2003

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 proposed income producing agricultural activities:

- (a) Ongoing agricultural activities include the following:
    - i. The activity is proposed.
  - (b) Proposed agricultural activity includes the following:
    - i. Various products produced through Vermiculture/Vermicomposting including worms, worm castings and soil additives. Three orchards are also proposed including clumping bamboo, Macadamia nut, Mango, Lychee, Rambutan and bananas and other fruit bearing trees as are found to be viable in the area.
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 6022) approved on April 15, 1991, which, pursuant to HRS §205-4.5(b), requires the first dwelling on the lot to be a farm dwelling.
3. The Farm Plan, GE Tax License (ID number 30132285), and the agreement to use the dwelling for agricultural or farm-related activity on the building site demonstrate that there is be income producing agricultural activity and the income is being taxed.

**EXHIBIT**  
A

4. In addition, the following agencies have submitted their comments as stated below:

(a) Department of Water Supply (Letter dated August 12, 2003):

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

For your information, this parcel has an existing service lateral for a 5/8-inch meter 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 6-inch waterline in Hoea Road.

Therefore, the Department has no objection 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.
2. Installation of two backflow preventers (reduced pressure type) by a licensed contractor on the applicant's property just after the meter. The installation and assembly of the backflow preventers must be inspected and approved by the Department before the water meter can be installed. 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.
3. Remittance of the following charges, which are subject to change, to our Customer Service Section:

Facilities Charge (One 2 <sup>nd</sup> Service at \$5,500.00 each)	\$5,500.00
Service Lateral Installation Charge (Install one meter on Hoea Road, a County road)	<u>\$2,600.00</u>
Total (Subject to Change)	\$8,100.00

**EXHIBIT**

A

Duane Elliott and Melanie Harper

Page 4

August 20, 2003

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

(b) Real Property Tax (RPT) Office (Submitted Tax Clearance):

The RPT office did not respond to this application.

(c) Department of Health (DOH) (Memorandum dated August 5, 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 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 entirely on proposed agricultural activity as summarized previously in this letter. It is required that the First Party (owners) to the Agreement shall have implemented at least 75% of the

**EXHIBIT**

A

Duane Elliott and Melanie Harper

Page 5

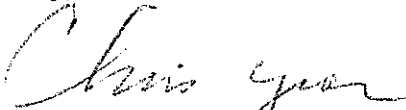
August 20, 2003

proposed farm plan within three (3) years of the 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 the 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 5, 2005 may cause the Director to initiate proceedings to invalidate the AFDA.

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

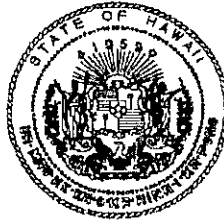
p:\afda\afda\jrh\apvl\elliott\harper\pvl.doc

Enclosure: AFDA document  
AFDA document instruction sheet

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

**EXHIBIT**

A



R-968  
STATE OF HAWAII  
BUREAU OF CONVEYANCES  
RECORDED  
OCT 16, 2003 08:02 AM  
Doc No(s) 2003-227023



/s/ CARL T. WATANABE  
REGISTRAR OF CONVEYANCES

20 1/1 Z6

---

---

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: DUANE ELLIOTT and MELANIE HARPER**

**SECOND PARTY: COUNTY OF HAWAII**

---

---

PROPERTY DESCRIPTION:

**TMK: (3) 5-5-007:025**

---

---

ADDITIONAL FARM DWELLING AGREEMENT

THIS AGREEMENT made and executed this 4th day of August, 2003, by and between **DUANE ELLIOTT and MELANIE HARPER**, herein called the "First Party," whose mailing address is P.O. Box 1562, Kapaau, Hawaii 96755, 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) 5-5-007:025 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.

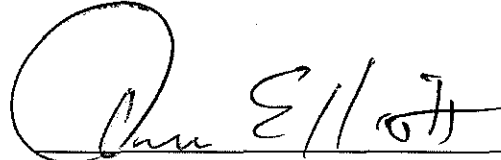
IT IS HEREBY FURTHER AGREED that if the property is situated within the State Land Use Agricultural district, the Second Party may impose a fine of not more than \$5,000 for violation of Section 205-4.5, Hawaii Revised Statutes. If the violation is not corrected within six months of such citation and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

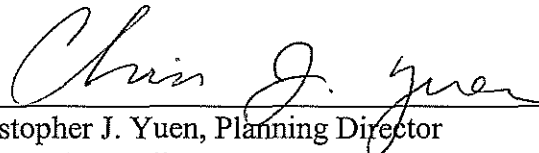


**DUANE ELLIOTT**, Legal Owner



**MELANIE HARPER**, Legal Owner

SECOND PARTY:



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

STATE OF HAWAII

)

COUNTY OF HAWAII

) SS.

)

On this 19th day of September, 2003 before me personally appeared **DUANE ELLIOTT and MELANIE HARPER** 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.

*Lee Ann Ashimine* Lee Ann Ashimine

Notary Public, State of Hawaii

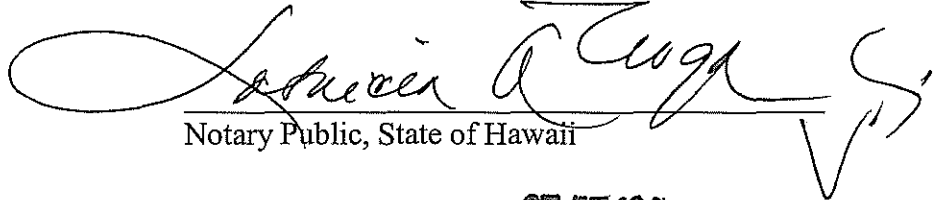
LS

My commission expires: My Commission Expires  
December 26, 2004

STATE OF HAWAII            )  
  ) SS  
COUNTY OF HAWAII        )

On this 14<sup>th</sup> day of October, 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



Notary Public, State of Hawaii

**07/17/06**

My commission expires: \_\_\_\_\_

North ↑

Banana Grove



Mac Nut, Mango, Lychee, Rambutan Orchard

Clumping Bamboo  
Planted Inside Fence Line



Vermiculature and Soil

Work Area

(Proposed)

Barn / 2nd  
Dwelling  
2 Bedroom

(Not Built Yet)

Dwelling 1 Bedroom

Road

