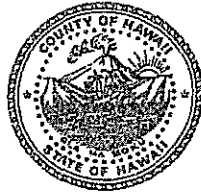


Harry Kim
Mayor



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 3, 2003

Michael H. and Joyce E. French
200 Kanoelehua Avenue #266
Hilo, Hawaii 96720

Dear Mr. and Mrs. French:

Additional Farm Dwelling Agreement

Applicants:	Michael H. French and Joyce E. French
Land Owners:	Charles J. Barend and Ana Barend, John W. Stevens and Joyce C. Stevens
State Land Use:	Agricultural
County Zoning:	Agricultural (A-20a)
Land Area:	1.608-acres
Tax Map Key:	(3) 2-7-008:040

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.

EXHIBIT

A.

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Michael H. and Joyce E. French

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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. The activity is proposed.

(b) Proposed agricultural activities include the following:

- i. 42 fruit trees on approximately 15,000 sq.ft. of the property. The trees would consist of Rambutan, Figs, Lychee and Limes.

5. As the purchase of the property is contingent on the approval of this additional farm dwelling request, a General Excise Tax will be obtained when the agricultural activity commences.

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 LD CT APP 1652 map 1 platted on October 19, 1953, which, pursuant to HRS §205-4.5(b), allows the first dwelling on the lot to be a single-family dwelling.
3. The Farm Plan proposal, promised GE Tax License acquisition, 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.

EXHIBIT

A

Michael H. and Joyce E. French
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4. In addition, the following agencies have submitted their comments as stated below:

(a) Department of Water Supply (Letter dated June 5, 2003):

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

For your information, this property has two existing laterals to service 5/8-inch meters at a maximum of 600 gallons per day per meter. This application is proposing a second detached dwelling: therefore the additional farm dwelling will need to connect to the second service lateral already installed.

The Department has no objections to the proposed application subject to the applicant understanding and accepting the following condition:

Installation of a backflow preventer (reduced pressure type) by a licensed contractor on the applicant's property just after the meter. The installation and of the backflow preventers must be inspected and approved by the Department. 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.

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

(b) Real Property Tax Office (Web site inquiry):

Real Property taxes are paid. \$0.00 due.

(c) Department of Health:

There were no comments received from the DOH.

Decision:

In view of the above, your request to construct a **second** farm dwelling is approved subject to the following conditions:

EXHIBIT

A

Michael H. and Joyce E. French

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July 3, 2003

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 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.
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 June 25, 2005 may cause the Director to initiate proceedings to invalidate the AFDA.

EXHIBIT

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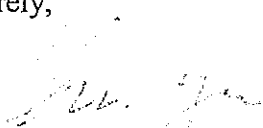
Michael H. and Joyce E. French

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July 3, 2003

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:pak

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Enclosure: AFDA document
AFDA document instruction sheet

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

EXHIBIT

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R-996 STATE OF HAWAII
BUREAU OF CONVEYANCES
RECORDED
DEC 23, 2003 08:02 AM
Doc No(s) 2003-283732



/s/ CARL T. WATANABE
REGISTRAR OF CONVEYANCES

20 1/1 Z3

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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: CHARLES J. BAREND, ANA BAREND,
JOHN W. STEVENS AND JOYCE C.
STEVENS**

SECOND PARTY: COUNTY OF HAWAII

PROPERTY DESCRIPTION:

TMK: (3) 2-7-008:040

ADDITIONAL FARM DWELLING AGREEMENT

THIS AGREEMENT made and executed this 24th day of June, 2003, by and between **CHARLES J. BAREND, ANA BAREND, JOHN W. STEVENS AND JOYCE C. STEVENS**, herein called the "First Party," whose mailing address is 200 Kanoelehua Avenue, Suite 266, Hilo, Hawaii 96720, 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) 2-7-008:040 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 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.

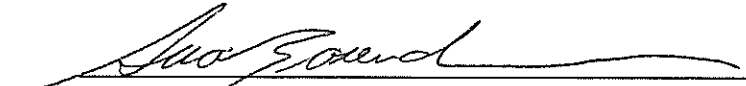
IN CONSIDERATION OF THE AFORESAID, the Second Party hereby approves this Agreement as being in conformity with Sections 205-2 and 205-4.5 of the Hawaii Revised Statutes, relative to permitted uses within the State Land Use Agricultural district. This Agreement is also in conformance with Chapter 25,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

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


FIRST PARTY:


CHARLES J. BAREND, Legal Owner


FIRST PARTY:


ANA BAREND, Legal Owner

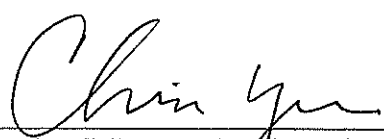
FIRST PARTY:

~~JOHN W. STEVENS, Legal Owner~~ 

~~FIRST PARTY:~~

~~JOYCE C. STEVENS, Legal Owner~~ 

~~SECOND PARTY:~~


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

STATE OF HAWAII

)

) SS.

COUNTY OF HAWAII

)

On this 12th day of November, 2003 before me personally
 appeared **CHARLES J. BAREND, ANA BAREND, ~~JOHN W. STEVENS AND~~**
~~**JOYCE C. STEVENS**~~ 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.

Mary Jane M. Stanough

Notary Public, State of Rhode Island

My commission expires: MY COMMISSION EXPIRES 12/20/2003

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

FIRST PARTY:

CHARLES J. BAREND, Legal Owner

FIRST PARTY:

ANA BAREND, Legal Owner

FIRST PARTY:



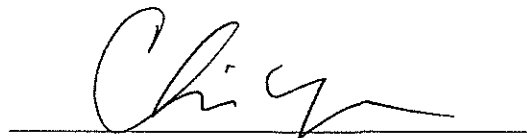
JOHN W. STEVENS, Legal Owner

FIRST PARTY:



JOYCE C. STEVENS, Legal Owner

SECOND PARTY:

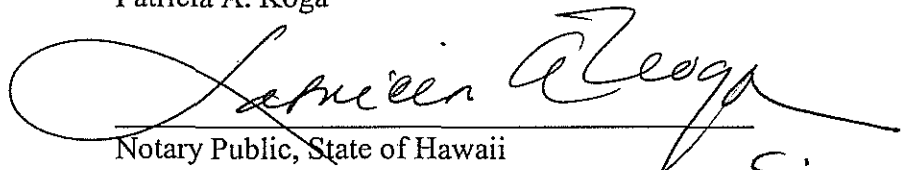


Christopher J. Yuen, Planning Director
County of Hawaii Planning Department

STATE OF HAWAII)
) SS
COUNTY OF HAWAII)

On this 18th day of December, 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: _____

V.S.

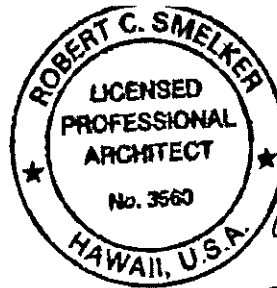
SITE PLAN

SC: 1" = 40'

TRK: (3) 2-7-8: 40

MICHAEL FRENCH RES.

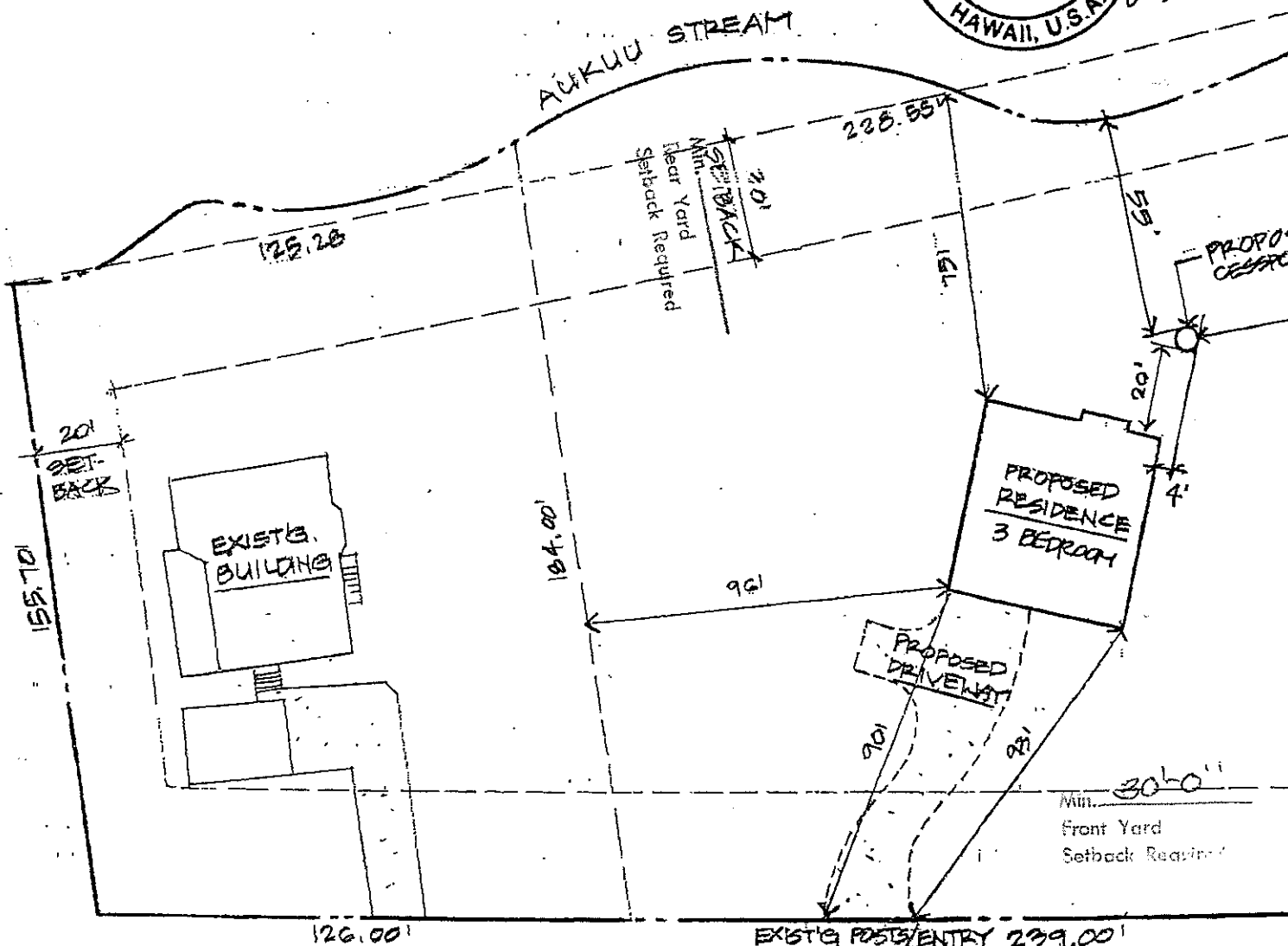
LOT SIZE: 1.608 ACRES



THIS WORK WAS PREPARED BY ME OR UNDER MY SUPERVISION AND CONSTRUCTION OF THIS PROJECT WILL BE UNDER MY OBSERVATION.

DEPARTMENT OF PUBLIC WORKS

ENGINEERING DIVISION



DRIVEWAY: IN ACCORDANCE WITH CHAPTER 22 OF THE HAWAII COUNTY CODE, A PERMIT SHALL BE OBTAINED FOR DRIVEWAY CONSTRUCTION WORK WITHIN THE COUNTY ROAD RIGHT-OF-WAY.

PROPOSED GRADING: ALL EARTHWORK AND GRADING SHALL CONFORM TO CHAPTER 10 OF THE HAWAII COUNTY CODE. A PERMIT MAY BE REQUIRED FOR LOT GRUBBING AND/OR GRADING.

DRAINAGE: NO ADDITIONAL RAINFALL RUNOFF GENERATED BY THIS PROJECT SHALL BE DISPOSED ON-TO COUNTY ROADWAYS OR ADJACENT PROPERTIES. ALL DRAINAGE IMPROVEMENTS SHALL CONFORM TO CHAPTER 22 OF THE HAWAII COUNTY CODE.

ROADWAY: CHECK WITH HIGHWAYS DIVISION IF ROADWAY IS MAINTAINED BY COUNTY OF HAWAII

DEPARTMENT OF PUBLIC WORKS

ENGINEERING DIVISION

REVIEWED BY: *ly*

MAR 29 2004

DATE:

APPROVED

[Signature]
Director, County Planning Department

Date: 3/29/04

GOVERNMENT ROAD