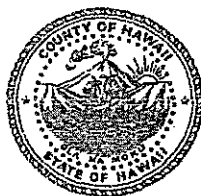


Harry Kim
Mayor



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 9, 2003

Clifford H. and Sylvia Harrington
87-2844 Mamalahoa Highway
Captain Cook, Hawaii 96704

Dear Mr. and Mrs. Harrington:

Additional Farm Dwelling Agreement

Applicants: Clifford H. and Sylvia Harrington
Land Owners: Clifford H. and Sylvia Harrington
State Land Use: Agricultural
County Zoning: Agricultural (A-5a)
Land Area: 27.70-acres
Tax Map Key: (3) 8-7-013:032

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 operation within the County, including an explanation of why this additional farm dwelling is needed in connection with the agricultural productivity or farming operation.

EXHIBIT

A

Clifford H. and Sylvia Harrington
Page 2
December 9, 2003

Your farm plan included the following ongoing and proposed income producing agricultural activities:

(a) Ongoing agricultural activities include the following:

- i. Present inventory includes, but is not limited to, 12 acres of macadamia (1,500 trees), 7 acres in coffee (4,000 trees), 1 acre of banana (300 trees) and assorted fruit trees throughout the farm (100 avocado, 25 lychee and 25 longan).

(b) Proposed agricultural activities include the following:

- i. Additional macadamia and coffee trees on another 5 acres.

The farm, at present, requires 2,000 man-hours for coffee, 600 hours for macadamia nuts and 700 hours for general farm work (fertilizing, weed control, tree trimming, etc.) per year. \$25,000 was paid out for labor last year.

5. In support, copies of form 1040 and N-11 tax returns for 2002 with attachments have 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 5814) approved on October 10, 1989, which, pursuant to HRS §205-4.5(b), requires the first dwelling on the lot to be used as a farm dwelling.
3. The Farm Plan, 2002 Federal Income Tax Return (form 1040) and State of Hawaii Income Tax Return (form N-11), 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.

EXHIBIT

A

Clifford H. and Sylvia Harrington

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

(a) Department of Water Supply (DWS):

The DWS did not comment on this application as of this date.

(b) Real Property Tax (RPT) Office (Submitted Tax Clearance Form dated September 15, 2003):

Taxes are paid through December 10, 2003.

(c) Department of Health (Memorandum dated October 20, 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** (first AFD) farm dwelling on the subject property 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.

EXHIBIT

A

Clifford H. and Sylvia Harrington

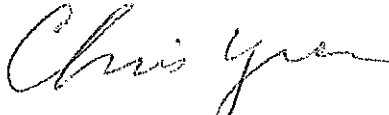
Page 4

December 9, 2003

4. Your Additional Farm Dwelling Agreement has been approved based entirely on ongoing agricultural activity as summarized previously in this letter.
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 November 18, 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:pak

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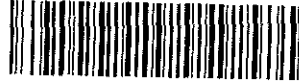
Enclosure: AFDA document/AFDA document instruction sheet

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

EXHIBIT
A



R-838 STATE OF HAWAII
BUREAU OF CONVEYANCES
RECORDED
DEC 26, 2003 08:02 AM
Doc No(s) 2003-286384



/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: CLIFFORD H. HARRINGTON and SYLVIA HARRINGTON

SECOND PARTY: COUNTY OF HAWAII

PROPERTY DESCRIPTION:

TMK: (3) 8-7-013:032

ADDITIONAL FARM DWELLING AGREEMENT

THIS AGREEMENT made and executed this 17th day of November, 2003, by and between **CLIFFORD H. HARRINGTON and SYLVIA HARRINGTON**, herein called the "First Party," whose mailing address is 87-2844 Mamalahoa Highway, Captain Cook, Hawaii 96704, 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) 8-7-013:032 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.

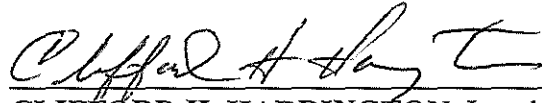
IT IS HEREBY FURTHER AGREED that should the pertinent provisions of the State and County laws and rules and regulations change to authorize said farm dwelling, upon request of the First Party, this Agreement may be reconsidered for possible amendment and/or severance.

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:

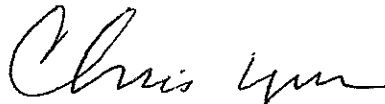


CLIFFORD H. HARRINGTON, Legal Owner



SYLVIA HARRINGTON, Legal Owner

SECOND PARTY:



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

STATE OF HAWAII
COUNTY OF HAWAII

)
) SS.
)

On this 16th day of DECEMBER, 2003 before me personally appeared **CLIFFORD H. HARRINGTON and SYLVIA HARRINGTON** 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.

Diana L. Akao

DIANA L. AKAO

Notary Public, State of HAWAII

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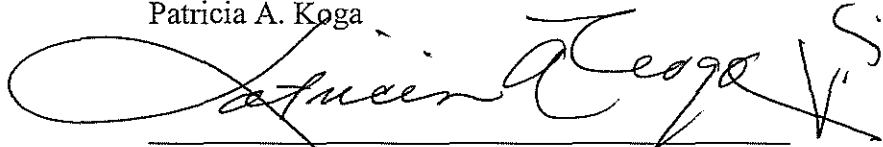
My commission expires:

06/02/06

STATE OF HAWAII)
) SS
COUNTY OF HAWAII)

On this 19th day of December, 2004 <sup>MP
3/KA</sup> 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: 07/17/06

MAP TOO BIG