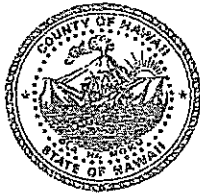


Harry Kim  
Mayor



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 30, 2003

James A. and Janice K. Manalili  
P.O. Box 792  
Kealahou, Hawaii 96750

Dear Mr. and Mrs. Manalili:

**SUBJECT:** Additional Farm Dwelling Agreement  
**Applicant:** James A. and Janice K. Manalili  
**Owner:** James A. and Janice K. Manalili  
**State Land Use:** Agricultural  
**County Zoning:** Agricultural (A-1a)  
**Land Area:** 1.0-acres  
**Tax Map Key:** (3) 8-2-001:120

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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 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**

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

(a) Ongoing agricultural activities include the following:

- i. Mango tree, several banana trees, some coffee trees, some eggplants and some lehua and mana taro.

(b) Proposed agricultural activities include the following:

- i. Further plantings of eggplant (1,500 sq. ft.) and taro (2,500 sq. ft.) and the addition of diversified crops such as ginger (500 sq. ft.), green onions among others.

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 3220) approved on January 22, 1973, 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, GE Tax License (ID number 30095838), and the agreement to use the dwelling for agricultural or farm-related activity on the building site demonstrate that there is/will be income producing agricultural activity and the income is/will be taxed.
4. In addition, the following agencies have submitted their comments as stated below:
  - (a) Department of Water Supply (Letter dated June 24, 2003):

**EXHIBIT**

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

For your information, an existing 5/8-inch meter services this property and is adequate for only one dwelling unit at 600 gallons per day. Therefore, to allow an additional farm dwelling, a second 5/8-inch meter must be installed. Water is available to the property from the County waterline within the easement, which fronts the subject parcel along the westerly boundary.

Therefore, the Department has no objections 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 lateral to service a 5/8-inch meter, which shall be restricted to a maximum daily flow of 600 gallons.
2. Remittance of the following charges, which are subject to change, to our Customer Service Section:

Facilities Charge

One 2<sup>nd</sup> Service at \$4,350.00 each \$4,350.00

Note: 2<sup>nd</sup> Service fee increases to \$5,500.00 effective July 1, 2003

Service Lateral Installation Charge

Note: Service Lateral Installation Charge increases to \$2,600 effective July 1, 2003

Install one meter appropriately located for the dwelling \$2,250.00

Total (Subject to change) \$6,600.00

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

Second Memorandum dated July 14, 2003

"We have reviewed our own letter regarding the subject application and have the following additional comments and conditions.

**EXHIBIT**

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James A. and Janice K. Manalili  
Page 4  
July 30, 2003

In addition to the requirements set forth in our letter to the Planning Director, dated June 24, 2003, the applicant will need to have a licensed contractor install a backflow prevention device on the customer's property just after the new meter. The backflow prevention device shall be operated and maintained by the customer. A copy of our backflow prevention device handout will be 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 (per tax clearance submitted):

"Real Property taxes are paid through June 30, 2003."

(c) Department of Health (Memorandum dated June 23, 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 additional farm) dwelling on the 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.

**EXHIBIT**

A

James A. and Janice K. Manalili

Page 5

July 30, 2003

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 partially 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 July 22, 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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Enclosures: AFDA document  
AFDA document instruction sheet

**EXHIBIT**

A

James A. and Janice K. Manalili  
Page 6  
July 30, 2003

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

**EXHIBIT**

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R-848

STATE OF HAWAII  
BUREAU OF CONVEYANCES  
RECORDED  
SEP 10, 2003 08:02 AM  
Doc No(s) 2003-192696



/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 A. MANALILI and JANICE K. MANALILI**

**SECOND PARTY: COUNTY OF HAWAII**

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PROPERTY DESCRIPTION:

**TMK: (3) 8-2-001:120**

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ADDITIONAL FARM DWELLING AGREEMENT

THIS AGREEMENT made and executed this 4<sup>th</sup> day of April, 2003, by and between **JAMES A. MANALILI and JANICE K. MANALILI**, herein called the "First Party," whose mailing address is P.O. Box 792, Kealahou, Hawaii 96750, 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) 8-2-001:120 situated within the State Land Use Agricultural district and zoned Agricultural (A-1a) 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.

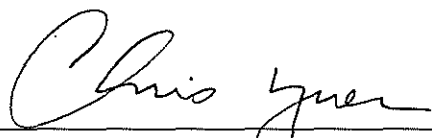
IN WITNESS WHEREOF, the parties have executed this agreement on the day and year first above written.

FIRST PARTY:

  
\_\_\_\_\_  
JAMES A. MANALILI, Legal Owner

  
\_\_\_\_\_  
JANICE K. MANALILI, Legal Owner

SECOND PARTY:

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

STATE OF HAWAII

)

) SS.

COUNTY OF HAWAII

)

On this 18<sup>th</sup> day of August, 2003 before me personally appeared **JAMES A. MANALILI and JANICE K. MANALILI**, 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.

Pat Campbell Pat Campbell

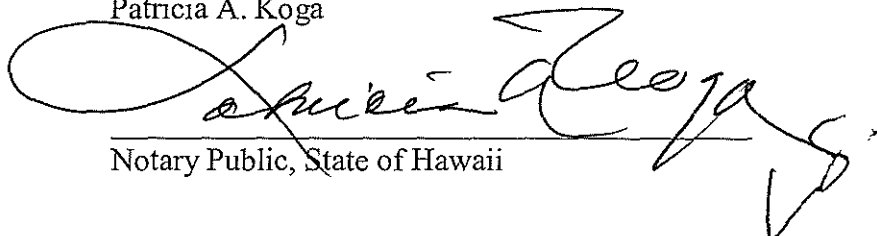
Notary Public, State of Hawaii

My commission expires: Sept 2, 2006

*L.S.*

STATE OF HAWAII        )  
                                  ) SS  
COUNTY OF HAWAII    )

On this 3<sup>rd</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  
  
\_\_\_\_\_  
Notary Public, State of Hawaii

My commission expires: 07/17/06

