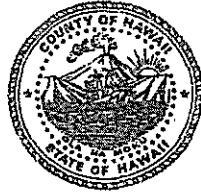


Harry Kim
Mayor



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

October 31, 2003

Terri L. and Russell S. Nahl
73-4413 Punawele Street
Kailua-Kona, Hawaii 96740

Dear Mr. and Mrs. Nahl:

Additional Farm Dwelling Agreement

Applicants: Terri L. and Russell S. Nahl
Land Owners: Terri L. and Russell S. Nahl
State Land Use: Agricultural
County Zoning: Agricultural (A-1a)
Land Area: 1.00-acres
Tax Map Key: (3) 7-3-046:047

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

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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 and proposed agricultural activities include the following:

- i. Propagation of Singapore Plumeria, Tiare, Mock Orange cuttings, citrus (lemon and lime), palms and other miscellaneous mature plants for landscape projects at Hualalai and Kukio Developments. Approximately 25,000 sq. ft. of the 43,562 sq.ft. property is dedicated to the activity. An estimation of 30 man-hours per week was presented. The plan is to be fully implemented by June 2005.

Applicant is a project manager for a construction company and this activity is directly associated with projects the company is involved with, 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 (3290-A) approved on July 11, 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 30121177), 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

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

(a) Department of Water Supply (Letter dated October 16, 2003):

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

We have no objections to the proposed additional farm dwelling. To access County water from the (DWS), the nearest point of adequacy is an 8-inch ductile iron pipeline running along Punawele Street, which fronts the subject property.

In accordance with “*Rule 5 – Water Commitments*” of the Department’s *Rules and Regulations* (effective October 10, 2003), a copy of which is being forwarded to the applicant, a water commitment may be issued by the DWS. It is recommended that the subdivider submit a water commitment deposit (WCD) for the proposed development as soon as possible so that a water commitment can be formally issued. The commitment will be in writing with the specific conditions and effective dates stated. The deposit for additional water units beyond the initial connection is \$150.00 per water unit. A water unit is an allowed average daily use of 400 gallons per day (gpd) and a maximum day usage of 600 gpd.

In this case, the total deposit for the one (1) additional water unit would be \$150.00. The WCD is credited against the facilities charge (FC) when the FC is paid. For further details see “*Rule 5 – Water Commitments*.”

Please keep in mind that this letter shall not be construed as a water commitment. Until the deposit is made and a water commitment is officially effected, water availability is subject to change depending on the water situation. Note that, after effecting a water commitment, it will be important to comply with all other applicable policies and requirements of the Department’s *Rules and Regulations*. Noncompliance may be cause for voiding a water commitment, at which time availability will be subject to change in accordance with the prevailing water system conditions, policies, and *Rules and Regulations*.

Water can be made available with the following conditions:

1. Pay the prevailing service lateral installation charge, which is subject to change, for any new service lateral to be installed by the DWS to provide access to the County water system. The prevailing service lateral installation charge is \$2,600.00 for each 5/8-inch meter to be installed within the County right-of-ways.

EXHIBIT

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2. Pay the prevailing FC, which is subject to change, for connecting to the County water system. The prevailing FC for an additional connection is \$5,500.00 and provides one unit of water to the second dwelling.
3. Pay the capital assessment fee, which is subject to change, for any new connection to the water system in the North Kona area. The prevailing capital assessment fee for the North Kona service area is \$500.00 per water unit.
4. Install backflow prevention assemblies on all service connections to the subject property. Note that any property engaged in agricultural activities is required to have a separate backflow prevention assembly installed on each service connection to Department of Water Supply Facilities, whether the service is already existing or being proposed. Each assembly is to be installed above ground, after the meter, on the customer's property. The consumer is responsible for the purchase of an assembly type meeting DWS requirements and installation by a licensed plumber. The operation, maintenance, and periodic testing of each backflow prevention assembly will be the responsibility of the consumer. For details, see a copy of the DWS handout on backflow prevention (copy to be forwarded to the consumer).

Should there be any questions, please contact Mr. Lawrence Beck of our Water Resources and Planning Branch at 961-8070."

- (b) Real Property Tax Office: (Response form dated September 12, 2003)

"Property is not receiving an agricultural assessment, nor is a request for such on file.

Real Property taxes are paid through December 31, 2003."

- (c) Department of Health (Memorandum dated October 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 a second farm dwelling is **approved** subject to the following conditions:

EXHIBIT

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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. The applicant shall coordinate with DWS for installations and fees payable as appropriate.
4. 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 Application.
5. The First Party shall complete all water system improvements necessary to provide water service to the AFD as may be required by the Department of Water Supply, including, but not limited to, the installation of a backflow prevention assemblies, prior to occupancy of the dwelling.
6. Your Additional Farm Dwelling Agreement has been approved based wholly 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.
7. The First Party shall allow the Second Party or its representative to inspect the farm upon reasonable prior notice.

EXHIBIT

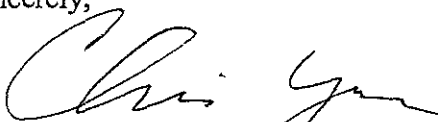
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Terri L. and Russell S. Nahl
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8. This Additional Farm Dwelling Agreement shall be valid for a period of two (2) years from the date of this approval letter to secure a building permit for the additional farm dwelling. Failure to secure a building permit for this additional farm dwelling on or before **October 22, 2005** may cause the Director to initiate proceedings to invalidate the AFDA.

Should you have any questions, please contact Jonathan Holmes of this office.

Sincerely,



CHRISTOPHER J. YUEN
Planning Director

JRH:pak
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Enclosures: AFDA document
AFDA document instruction sheet

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

EXHIBIT

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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: RUSSELL S. NAHL and TERRI L. NAHL

SECOND PARTY: COUNTY OF HAWAII

PROPERTY DESCRIPTION:

TMK: (3) 7-3-046:047

ADDITIONAL FARM DWELLING AGREEMENT

THIS AGREEMENT made and executed this 21st day of October, 2003, by and between **RUSSELL S. NAHL and TERRI L. NAHL**, herein called the "First Party," whose mailing address is P.O. Box 1596, Kailua-Kona, Hawaii 96745, 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) 7-3-046:047 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:

RUSSELL S. NAHL, Legal Owner

TERRI L. NAHL, Legal Owner

SECOND PARTY:

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

STATE OF HAWAII

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) SS.

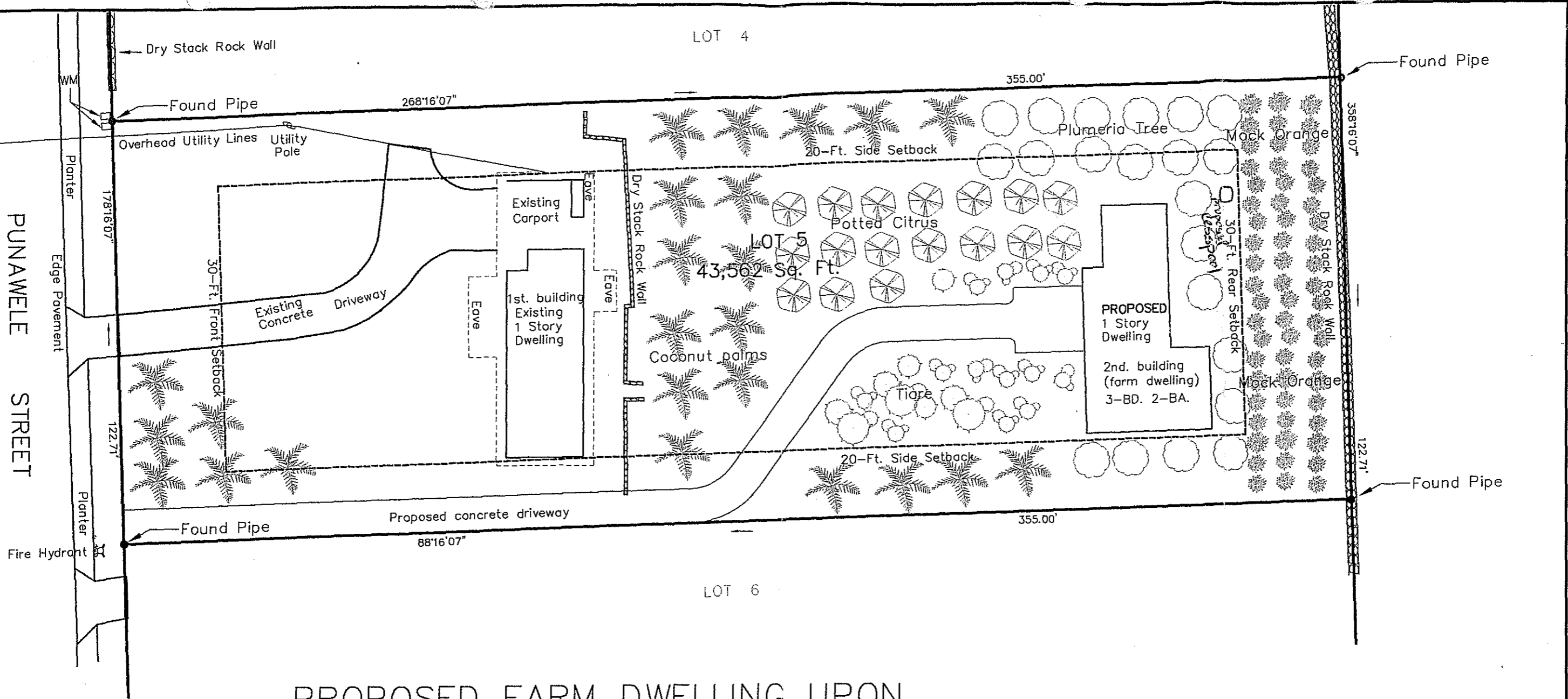
COUNTY OF HAWAII

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On this _____ day of _____, 2003 before me personally appeared **RUSSELL S. NAHL and TERRI L. NAHL** 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.

Notary Public, State of _____

My commission expires: _____



PROPOSED FARM DWELLING UPON
LOT 5

KONA ACRES – UNIT II, INCREMENT A
FILE PLAN 1348

AT OOMA 1ST, NORTH KONA
ISLAND OF HAWAII, HAWAII
Tax Map Key (3rd Division): 7-3-46:47

SITE PLAN



NORTH
SCALE: 1" = 30'-0"