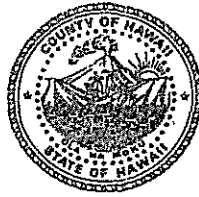


Harry Kim
Mayor



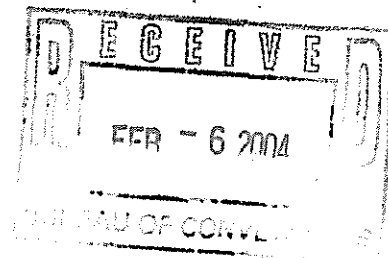
Christopher J. Yuen
Director

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

November 3, 2003

Kalia Nai'a
% Mr. Klaus D. Conventz
Baumeister Consulting
P.O. Box 2308
Kailua-Kona, Hawaii 96745-2308



Dear Kalia Nai'a:

SUBJECT: Additional Farm Dwelling Agreement

Applicant: Kalia Nai'a

Land Owners: Kalia Nai'a, Cecilia M. Polete and Todd A. Czerwinski

State Land Use: Agricultural

County Zoning: A-3a

Land Area: 4.638-acres

Tax Map Key: (3) 5-9-007:027

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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Kalia Nai'a
% Mr. Klaus D. Conventz
Baumeister Consulting
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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) Proposed agricultural activities include the following:

- i. Relocation of an existing plantscape business, Waimea Nursery, Inc., to the proposed 1,000 sq.ft. greenhouse. Approximately 500 indoor décor plants, which are rented/leased to the resorts, banks, various other businesses, private high-end residences, conventions and weddings. Among other plant types, there are 150-200 specimen plants and trees and 50-75 palms (including samoan, areca, sago, phoenix, parlor, manila, raphis and fishtails). There are also orchids, bromeliads, anthuriums, stephanotis and ficus, etc. for use as decorative table/area plants. The company also maintains these plants at the client's premises. In addition, the company propagates wili wili trees (approximately 50) and thornless kiawe trees (50-75).

The weekly labor for the agricultural activity (presently occurring at the leased site in Puako) is 40 hours per week for the nursery business (20 hours for servicing and maintaining ongoing accounts and 20 hours related to irrigation, fertilizing, repotting and propagation). The additional outdoor plant specimen implementation should require an additional 20 hours per week.

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)

EXHIBIT

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Kalia Nai'a
% Mr. Klaus D. Conventz
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2. The subject lot was created by subdivision (SUB 6037) approved on June 27, 1991, 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, GE Tax License (ID number 30128200), 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.
4. In addition, the following agencies have submitted their comments as stated below:

(a) Department of Water Supply (DWS) (Memorandum Dated October 13, 2003):

“Current water availability in the subject area limits water service to one unit per existing lot of record. Current guidelines state that no additional farm dwellings are allowed. The Department of Water Supply is not in a position to grant additional water units until such time as additional water system facilities are installed. Extensive improvements and additions, including source, storage, transmission, and booster pump facilities, must be constructed. Currently sufficient funding is not available and no time schedule is set.

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

DWS follow-up memorandum dated October 22:

(restated the above and additionally:)

“Mr. Klaus D. Conventz contacted this Department on October 17, 2003, and explained that the subject property is on a private water system (Kohala Ranch) and is not serviced by a County operated water system. Therefore, County restrictions on the availability of County water for that area would not apply and should not be a reason for denial of the subject application. The applicant is not requesting County water.”

(b) Real Property Tax Office: (per submitted RPT Tax clearance forms)

“This is to certify that ... has paid all real property taxes due to the County of Hawaii up to and including 6/30/03.”

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Kalia Nai'a
% Mr. Klaus D. Conventz
Baumeister Consulting
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(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:

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, Fire Department and State Department of Health and other reviewing agencies/divisions listed on the Building Permit Application.
4. The First Party shall consult with the DWS and comply with any conditions they might stipulate.
5. Your Additional Farm Dwelling Agreement has been approved based completely 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

EXHIBIT

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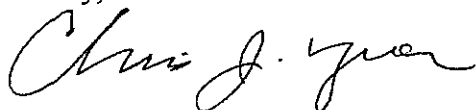
Kalia Nai'a
% Mr. Klaus D. Conventz
Baumeister Consulting
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approval of the building permit for the additional farm dwelling. The Second Party (County of Hawaii Planning Department) of the Agreement may allow time extensions and modifications for good cause shown by First Party.

6. The First Party shall allow the Second Party or its representative to inspect the farm upon reasonable prior notice.
7. 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 3, 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

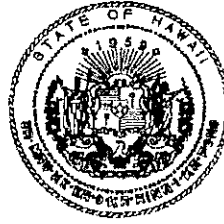
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Enclosures: AFDA document
AFDA document instruction sheet

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

EXHIBIT

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R-763

STATE OF HAWAII
BUREAU OF CONVEYANCES
RECORDED

FEB 09, 2004 08:02 AM

Doc No(s) 2004-026817



/s/ CARL T. WATANABE
REGISTRAR OF CONVEYANCES

20 111 Z3

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: KALIA NAI'A, CECILIA M. POLETE and TODD A. CZERWINSKI

Polete

SECOND PARTY: COUNTY OF HAWAII

PROPERTY DESCRIPTION:

TMK: (3) 5-9-007:027

ADDITIONAL FARM DWELLING AGREEMENT

THIS AGREEMENT made and executed this 13th day of October, 2003, by and between **KALIA NA'Ā, CECILIA M. POLETE** ^{POLETE N/A} and **TODD A. CZERWINSKI**, herein called the "First Party," whose mailing address is c/o Baumeister Consulting, P.O. Box 2308, Kailua-Kona, Hawaii 96745-2308, 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) 5-9-007:027 situated within the State Land Use Agricultural district and zoned Agricultural (A-3a) 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.

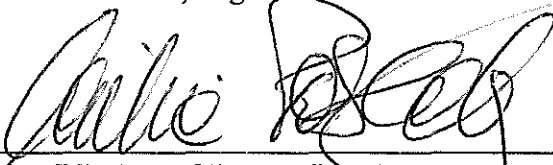
IN CONSIDERATION OF THE AFORESAID, the Second Party hereby approves this Agreement as being in conformity with Sections 205-2 and 205-4.5 of the Hawaii Revised Statutes, relative to permitted uses within the State Land Use Agricultural district. This Agreement is also in conformance with Chapter 25,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


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

FIRST PARTY:



KALIA NAI'A, Legal Owner

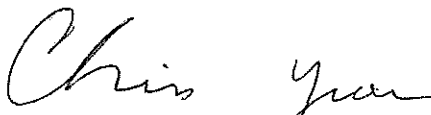


CÉCILIA M. POLETTE, Legal Owner
Pobletē 



TODD A. CZERWINSKI, Legal Owner

SECOND PARTY:



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

STATE OF HAWAII

)

) SS.

COUNTY OF HAWAII

)

On this 28th day of November, 2003 before me personally appeared ~~KALIA NAI'A, CECILIA M. POLETE and TODD A. CZERWINSKI~~ ^{NP/DH}

to me known to be the persons described in and who executed the foregoing instrument, and acknowledged that ^{she} ~~they~~ ^{her} ~~as their~~ free act and deed. ^{NP/DH}

Debra Hart DEBORA S. HART


Notary Public, State of Hawaii

JS

My commission expires: 4-1-2005

STATE OF HAWAII)
) SS
COUNTY OF HAWAII)

On this 17th day of November, 2003 before me personally appeared Todd Aaron Czerwinski to me known to be the person (s) described in and who executed the foregoing instrument, and acknowledged that he/she/they executed the same as his/her/their free act and deed.



Notary Public, State of Hawaii

My Commission Expires: RACHEL FRANCISCO
NOTARY PUBLIC, STATE OF HAWAII
COMMISSION EXPIRES: 12/22/2005

CS

STATE OF HAWAII)
) SS
COUNTY OF HAWAII)

On this 5th day of December, 2003 before me personally appeared Cecilia Poblete to me known to be the person (s) described in and who executed the foregoing instrument, and acknowledged that she executed the same as her free act and deed.



Notary Public, State of HAWAII

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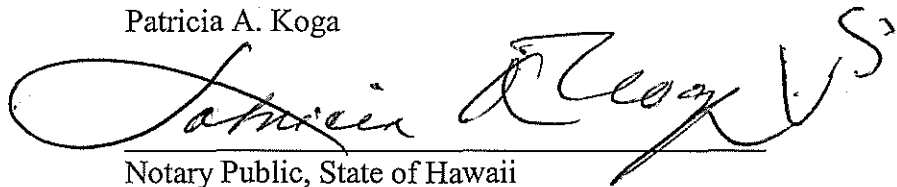
My Commission Expires: _____

RACHEL FRANCISCO
NOTARY PUBLIC, STATE OF HAWAII
COMMISSION EXPIRES: 12/22/2005

STATE OF HAWAII)
) SS
COUNTY OF HAWAII)

On this 2nd day of February, 2004 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

Scanned Map
Unavailable
Due to Size

See File

