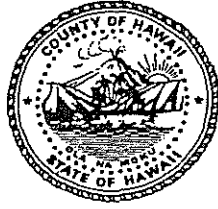


Harry Kim
Mayor



Christopher J. Yuen
Director

Roy R. Takemoto
Deputy Director

County of Hawaii

PLANNING DEPARTMENT

Aupuni Center • 101 Pauahi Street, Suite 3 • Hilo, Hawaii 96720
Phone (808) 961-8288 • Fax (808) 961-8742

February 25, 2005

John C. & Elisa F. Tolfree
82-1141 Kinue Rd.
Captain Cook, Hawaii 96704

Dear Mr. & Mrs. Tolfree:

Additional Farm Dwelling Agreement Application (2004-0034)

Applicant: John C. & Elisa F. Tolfree

Owner: John C. Tolfree
Elisa F. Tolfree

State Land Use: Agricultural

County Zoning: Agricultural (A-5a)

Land Area: 5.508 acres

TMK: (3) 8-2-001: 021

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. 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.
2. Written authorization of the landowner(s) if the lessee filed the request.
3. 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. Approximately 4+ acres with 1600 coffee trees..

- b. Utilizing an additional acre for 5+ acres for proposed agricultural activities include the following:
 - i. An additional 900 coffee trees.
 - ii. 36 avocado trees
 - iii. 3 varieties of banana trees
 - iv. various tropical flowers
 - v. various citrus, lychee, and mango trees.
 - c. The labor man-hours are approximately 64 hours per week to maintain and harvest.
4. Applicant's commitment to the farm plan will be shown in the form of the enclosed Additional Farm Dwelling Agreement affidavit, to be notarized and submitted for recordation with the Bureau of Conveyances, which states that the additional dwelling shall be used for farm-related purposes.

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 prior to June 4, 1976, 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 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.
4. In addition, the following agencies have submitted their comments as stated below:
 - a. Department of Water Supply (DWS) (Letter dated February 3, 2005):

"We have reviewed the subject application, and our records show that the subject parcel does not have water service with the Department. It is our understanding that the applicants will use a catchment system for their water as they are outside the service limits of the Department.

John C. & Elisa F. Tolfree

February 25, 2005

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Therefore, the Department has no objections to the application.

Should there be any questions, please contact Ms. Shari Komata of our Water Resources and Planning Branch at 961-8070, extension 252.”

b. Real Property Tax Office (RPT):

There were no comments received.

c. Department of Health (DOH):

There were no comments received.

Decision:

In view of the above, your request to construct a **second farm dwelling** is 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. The First Party shall adhere to 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.

John C. & Elisa F. Tolfree
February 25, 2005
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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 February 26, 2007 may cause the Director to initiate proceedings to invalidate the AFDA.

If you have any questions please call Deanne Bugado of our West Hawaii Office at 327-3510.

Sincerely,


CHRISTOPHER J. YUEN
Planning Director

BM:deb
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Enclosure: AFDA document
AFDA document instruction sheet

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

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: JOHN C. TOLFREE
 ELISA F. TOLFREE**

SECOND PARTY: COUNTY OF HAWAII

PROPERTY DESCRIPTION:

TMK: (3) 8-2-001:021

ADDITIONAL FARM DWELLING AGREEMENT

THIS AGREEMENT made and executed this 25th day of February, 2005, by and between JOHN C. TOLFREE. and ELISA F. TOLFREE, herein called the "First Party," whose mailing address is 82-1141 Kinue Road, 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) 8-2-001:021 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.

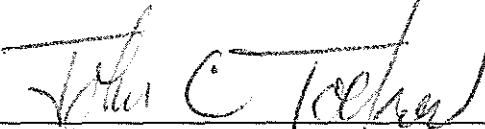
IT IS HEREBY FURTHER AGREED that should the pertinent provisions of the State and County laws and rules and regulations change to authorize said farm dwelling, upon request of the First Party, this Agreement may be reconsidered for possible amendment and/or severance.

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.

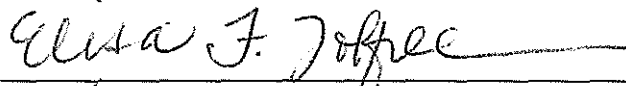
IN CONSIDERATION OF THE AFORESAID, the Second Party hereby approves this Agreement as being in conformity with Sections 205-2 and 205-4.5 of the Hawaii Revised Statutes, relative to permitted uses within the State Land Use Agricultural district. This Agreement is also in conformance with Chapter 25,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

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

FIRST PARTY:

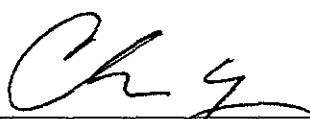


John C. Tolfree, Legal Owner



Elisa C. Tolfree, Legal Owner *ed*
F, *im*

SECOND PARTY:



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

STATE OF HAWAII)
) SS.
COUNTY OF HAWAII)

On this 18th day of JULY, 2005 before me personally appeared JOHN C. TOLFREE and ELISA F. TOLFREE to me known to be the person described in and who executed the foregoing instrument, and acknowledged that they executed the same as their free act and deed.

Neel Watsunashi NEEL W MATSUNASHI
Notary Public, State of HAWAII

L.S.

My commission expires: 8-5-05


STATE OF HAWAII)
) SS
COUNTY OF HAWAII)

On this 29th day of July, 2005 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 

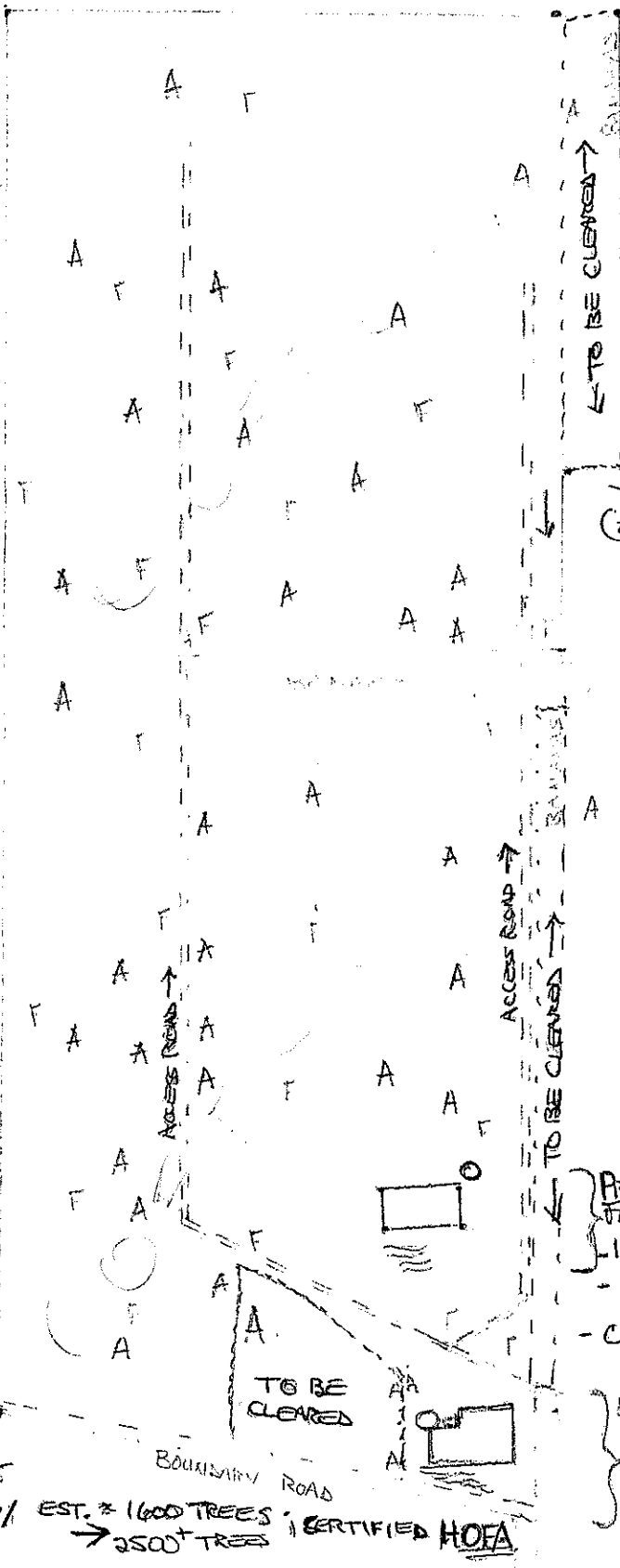


EXISTING, CLEARED

4+ ACRES NOW WITH
600 TREES AND
APPROX. AT 60%
PRODUCTION.

PLAN IS TO PLANT
4 ADDITIONAL 900
TREES WITHIN EX-
ISTING ROWS AND
WORK TOWARDS 100%
CAPACITY AT APPROX
1500 TREES.

THIS WILL IN-
CLUDE MORE INTENS-
IVE PRUNING AND
FERTILIZING.



AN EXISTING
(APPROX) 3/4 ACRE
OF HEAVILY OVER-
GROWN LAND IS
TO BE CLEARED
OLD COFFEE TREES
TO BE PRUNED,
AND ADDITIONAL
TREES PLANTED
(EST. 300+ MORE)

PROPOSED ADDITIONAL
FARM DWELLING:
- 1100 SQ FT / 1 BR
- ELECTRIC BROUGHT
UP FROM EXISTING
- CATCHMENT AND
SEPTIC SYSTEMS.

EXISTING 3 BR FARM
HOUSE WITH
CATCHMENT +
CESSPOOL

Key

TOTAL ACREAGE = 5.5

OFFICE = 9.5% CROP/
LAND USE

= AVOCADOS; EST = 36 TREES
= FLOWERS

EST. * 1600 TREES
→ 2500+ TREES

TO BE
CLEARED

BOUNDARY ROAD

ACCESS ROAD

DRIVEWAY

CERTIFIED HOFA

PROPOSAL, AND REASON FOR ADDITIONAL DWELLING,
IS TO INCREASE NUMBER OF COFFEE TREES / CARE
OF THE LAND / FLOWER, BANANA, AVOCADO PRODUCTION.