

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

April 28, 2004

Katherine M. Bell and Thomas C. Blackburn  
75-5572 Kona Bay Drive, Apt. 25  
Kailua-Kona, Hawaii 96740

Dear Ms. Bell and Mr. Blackburn:

**SUBJECT: Additional Farm Dwelling Agreement**  
**Applicants: Katherine M. Bell and Thomas C. Blackburn**  
**Land Owners: Katherine M. Bell and Thomas C. Blackburn**  
**State Land Use: Agricultural**  
**County Zoning: A-5a**  
**Land Area: 18.245-acres**  
**(6.407 acres in Proposed Subdivision)**  
**Tax Map Key: (3) 7-3-005:122**

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.

*Hawai'i County is an equal opportunity provider and employer.*

**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 AFD is needed in connection with the agricultural productivity or farming operation.

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

(a) Ongoing agricultural activities include the following:

- i. The property currently has native tree specimens including alahe'e, lama, māmane and 'ohe makai growing on it. Invasive species are presently being eradicated in anticipation of the future activity.
- ii. The nursery assistant will occupy the additional farm dwelling. The first farm dwelling will be occupied by the land owners/nursery operators.
- iii. The nursery owner/operator has invested upwards of \$8,900.00 as of the application for the additional farm dwelling on site work and various landscaping and horticultural classes and workshops in preparation for the implementation of the activity.

(b) Proposed agricultural activities include the following:

- i. The main area to be utilized for the nursery is a 60' x 100' growing area with a 24' x 24' shade house and 10' x 12' storage shed. The proposal indicates that some native trees grown in the nursery will be planted on the to supplement the existing stock and to showcase them for customers.
- ii. Native trees that will be propagated for sale will include 'akoko, alahe'e, 'awikiwiki, hala pepe, 'iliahi, 'ilie'e, kauila, koai'a, koki'o, ke'oke'o, lama, loulu, maiapilo, māmane, ma'o, naio, nānū, 'ohe makai, pua kala, uhiuhi and wiliwili.
- iii. It is anticipated that the nursery owner/operator will spend 40 hours a week and that the assistant will initially spend 20 with increases as the business expands.

5. In support, it is stated that a State of Hawaii Department of Taxation's General Excise (GE) Tax License is being applied for.

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**

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**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 February 24, 2004, which, pursuant to HRS §205-4.5(b), requires the first dwelling on the lot to be a farm dwelling.
3. The Farm Plan, promise to obtain a GE Tax License (#30133743) 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 March 2, 2004):

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

The original parcel is currently in the subdivision process and has used up all of its units per the Department’s current water availability guidelines. Therefore, the Department has no objections to the proposed application subject to the applicant understanding and accepting that the Department cannot provide water service to the proposed additional farm dwelling. Further, if the application should be approved, both dwellings must not share the existing meter.

Should there be any questions, please call Ms. Shari Komata of our Water Resources and Planning Branch at 961-8070, extension 1.”

Second Memorandum dated April 23, 2004:

“Please be informed that the Department has discussed the subject application with Mr. Thomas Yamamoto for Ms. Bell and Mr. Blackburn. As no other farm dwellings are planned for this subdivision, the Department has agreed to provide one unit of water to this parcel for the aforementioned application.

A second 5/8-inch meter should be installed for the detached second dwelling unit. Water is available from the 4-inch waterline from Ahiahi Street, which fronts the subject parcel. Therefore, the Department has no objections to the proposed

**EXHIBIT**

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application subject to the applicant understanding and accepting the following conditions:

1. Installation, by the Department of Water Supply, of a second 1-inch service lateral to service a 5/8-inch meter, which shall be restricted to an average daily flow of 400 gallons.
2. Installation of a backflow preventer (reduced pressure type) by a licensed contractor on the applicant's property just after the meter. The installation and assembly of the backflow preventer must be inspected and approved by the Department before the water meter can be installed. The backflow preventer shall be operated and maintained by the customer. A copy of our backflow preventer handout is being forwarded to the applicant to help them understand this requirement.
3. Remittance of the following charges, which are subject to change, to our Customer Service Section:

a. Facilities Charge (One 2 <sup>nd</sup> service at \$5,500.00 each)	\$5,500.00
b. Capital Assessment Fee	500.00
c. Service Lateral Installation Charge	<u>2,600.00</u>
Total (Subject to change)	\$8,600.00

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

(b) Real Property Tax Office (RPT):

RPT did not comment on this application as of this date.

(c) Department of Health (DOH) (Memorandum dated March 17, 2004):

"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

**EXHIBIT**

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property is approved subject to the following conditions:

1. The AFD 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 AFD 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 AFDA 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 contact the Department of Water Supply to arrange for payment of required fees and arrangement for required inspections.
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, Department of Water Supply, Fire Department and State Department of Health and other reviewing agencies/divisions listed on the Building Permit Application shall be adhered to.
5. Your AFDA has been approved based 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.
6. The First Party shall allow the Second Party or its representative to inspect the farm upon reasonable prior notice.
7. This AFDA shall be valid for a period of two (2) years from the date of this approval letter to secure a BP for the additional farm dwelling. Failure to secure a BP for this additional farm dwelling on or before April 29, 2006 may cause the Director to initiate proceedings to invalidate the AFDA.

**EXHIBIT**

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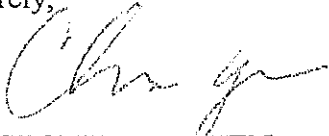
Katherine M. Bell and Thomas C. Blackburn

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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

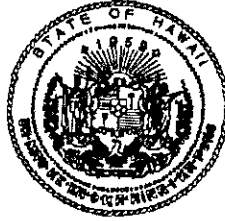
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Enclosures: AFDA document  
AFDA document instruction sheet

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

EXHIBIT

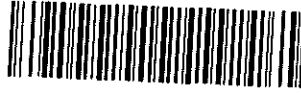
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R-630

STATE OF HAWAII  
BUREAU OF CONVEYANCES  
RECORDED  
MAY 24, 2004 08:02 AM

Doc No(s) 2004-103683



/s/ CARL T. WATANABE  
REGISTRAR OF CONVEYANCES

20 1/1 Z6

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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: KATHERINE M. BELL and THOMAS C. BLACKBURN**

**SECOND PARTY: COUNTY OF HAWAII**

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PROPERTY DESCRIPTION:

**TMK: (3) 7-3-005:122**

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ADDITIONAL FARM DWELLING AGREEMENT

THIS AGREEMENT made and executed this 28<sup>th</sup> day of April, 2004, by and between **KATHERINE M. BELL and THOMAS C. BLACKBURN**, herein called the "First Party," whose mailing address is 75-5572 Kona Bay Drive, Kailua-Kona, Hawaii 96740, 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) 7-3-005:122 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.

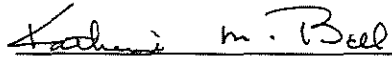


IT IS HEREBY FURTHER AGREED that if the property is situated within the State Land Use Agricultural district, the Second Party may impose a fine of not more than \$5,000 for violation of Section 205-4.5, Hawaii Revised Statutes. If the violation is not corrected within six months of such citation and 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:

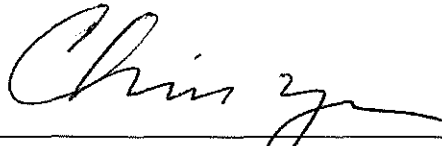


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**KATHERINE M. BELL**, Legal Owner



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**THOMAS C. BLACKBURN**, Legal Owner

SECOND PARTY:



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**CHRISTOPHER J. YUEN**, Planning Director  
County of Hawaii Planning Department

STATE OF HAWAII

)

) SS.

COUNTY OF HAWAII

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On this 5<sup>th</sup> day of May, 2004 before me personally appeared **KATHERINE M. BELL and THOMAS C. BLACKBURN** 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.

*Priscilla A. Stokes*  
PRISCILLA A. STOKES  
Notary Public, State of Hawaii

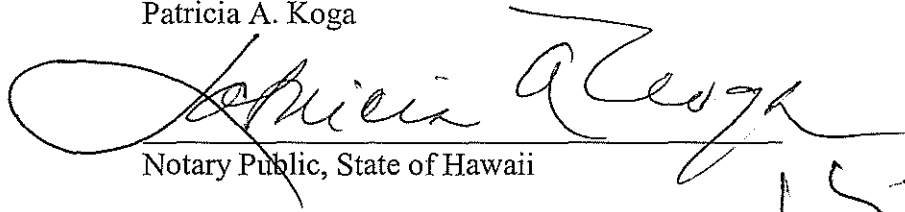
L.S.

My commission expires: Nov. 29, 2007

STATE OF HAWAII            )  
  ) SS  
COUNTY OF HAWAII        )

On this 14<sup>th</sup> day of May, 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  
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See File

