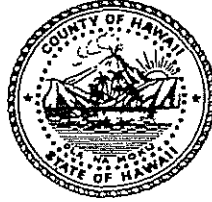


Harry Kim
Mayor



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

July 20, 2004

Richard H. Bennett
Bennett Family Trust
87-3020 Mamalahoa Hwy.
Captain Cook, Hawaii 96704

Dear Mr. Bennett:

Additional Farm Dwelling Agreement
Applicant: Richard H. Bennett
Owner: Bennett Family Trust
State Land Use: Agricultural
County Zoning: Agricultural (A-5a)
Land Area: 5.011 acres
TMK: (3) 8-7-010:019

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. Your farm plan included the following ongoing and proposed income producing agricultural activities:
 - a. Ongoing agricultural activities include the following on 4.5 acres:
 - i. Cultivate the following Trees: 50 Koa, 15 Ohia, 100 E. Deglupta, 25 L. Confertus, 3 Lumber Bamboo, 20 Kukui Nut, 35 Avocado, 30 Mango, 10

EXHIBIT "A"

Assorted Citrus, 95 Coffee, and 50 Banana.

- b. Proposed agricultural activities include the following:
 - i. Cultivate 900 coffee seedlings.
 - ii. Cultivate 30 Coco plants.
 - iii. Cultivate 30 citrus plants.
 - c. The present labor man-hours are approximately 30 per week to maintain and harvest, at full production the labor man-hours will be 60+ hours per week.
5. In additional support, evidence of Schedule "F" Taxation Form submittals 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 (7060) approved on April 24, 2001, which, pursuant to HRS §205-4.5(b), requires the first dwelling on the lot to be a farm dwelling.
3. The subject lot is subject to Variance Permit No. 713 (VAR 95-77), approved on December 7, 1995, which have conditions specific to water requirements.
4. The Farm Plan, Schedule "F" Taxation Forms, 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.
5. In addition, the following agencies have submitted their comments as stated below:
 - a. Department of Water Supply (DWS) (Letter dated June 25, 2004):

"We have reviewed the subject application and have the following information.

The property does not have an existing water service with the Department as the parcel is beyond the service limits of the Department's existing water system. Also, this lot was created with a variance from the subdivision water requirements; therefore, the Department has no objections to the application, subject to the applicant complying with the conditions of the approved variance.

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

Richard Bennett
July 20, 2004
Page 3

- b. Real Property Tax Office (RPT):
There were no comments received.
- c. Department of Health (DOH) (Letter dated June 25, 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 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.
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 20, 2006 may cause the Director to initiate proceedings to invalidate the AFDA.

EXHIBIT "A"

Richard Bennett
July 20, 2004
Page 4

7. This Additional Farm Dwelling shall comply with all conditions of Variance Permit No. 713.

In reference to the Department of Water Supply's comment and Variance Permit No. 713, we suggest the following:

1. Any dwelling not serviced by a County water system should be provided with and maintain a private potable rain-water catchment system with a minimum capacity of 6,000 gallons for domestic consumption or potable uses. This catchment system should adhere to the Department of Public Works, Building Division's "Guidelines for Owners of Rain Catchment Water Systems" as well as the State Department of Health requirements related to water testing and water purifying devices.
2. Any farm dwelling should be provided with and maintain a private water supply system with an additional minimum storage capacity of 3,000 gallons for fire fighting and other emergency purposes. The emergency water supply system, including the necessary compatible connection devices and the location of the water storage unit on the property, should meet with the approval of the Hawaii County Fire Department. If dwellings are spaced closer than 50 feet apart, 4,000 gallons of water per dwelling will be required.

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

Sincerely,


CHRISTOPHER J. YUEN
Planning Director

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Enclosure: AFDA document
AFDA document instruction sheet

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

EXHIBIT "A"

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: RICHARD H. BENNETT, TRUSTEE OF THE BENNETT
FAMILY TRUST DATED MAY 4, 1999**

SECOND PARTY: COUNTY OF HAWAII

PROPERTY DESCRIPTION:

TMK: (3) 8-7-010:019

ADDITIONAL FARM DWELLING AGREEMENT

THIS AGREEMENT made and executed this 20th day of July, 2004, by and between RICHARD H. BENNETT, TRUSTEE OF THE BENNETT FAMILY TRUST DATED MAY 4, 1999, herein called the "First Party," whose mailing address is c/o Richard H. Bennett, 87-3020 Mamalahoa Highway, 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) 8-7-010:019 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.

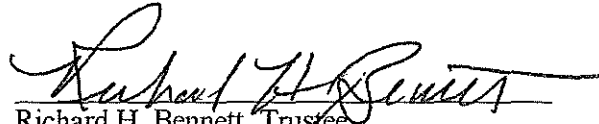
IT IS HEREBY FURTHER AGREED that should the pertinent provisions of the State and County laws and rules and regulations change to authorize said farm dwelling, upon request of the First Party, this Agreement may be reconsidered for possible amendment and/or severance.

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:



Richard H. Bennett, Trustee
For the Bennett Family Trust, dated May 4, 1999
Legal Owner

SECOND PARTY:



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

STATE OF HAWAII)
) SS.
COUNTY OF HAWAII)

On this 210 day of September, 200__ before me personally appeared RICHARD H. BENNETT, TRUSTEE OF THE BENNETT FAMILY TRUST DATED MAY 4, 1999 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.

Martha Unger Martha Unger
Notary Public, State of Hawaii

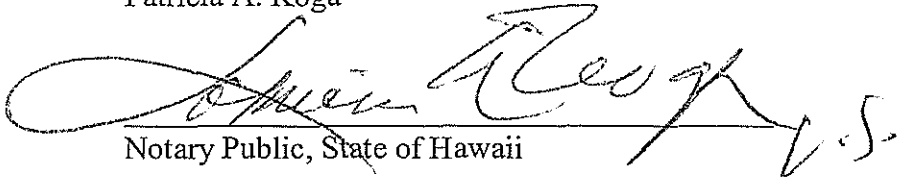
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My commission expires: 9-17-2006

STATE OF HAWAII)
) SS
COUNTY OF HAWAII)

On this 13th day of August, 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

07/17/06

My commission expires: _____

