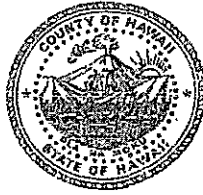


Harry Kim
Mayor



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

January 26, 2004

Stephen P. and Helen J. Bowles
Mauna Kea Orchards
P.O. Box 2046
Kamuela, Hawaii 96743

Dear Stephen P. and Helen J Bowles:

SUBJECT: **Additional Farm Dwelling Agreement**
Applicants: **Stephen P. and Helen J Bowles**
Land Owners: **Stephen P. and Helen J Bowles**
State Land Use: **Agricultural**
County Zoning: **A-40a**
Land Area: **3.00-acres**
Tax Map Key: **(3) 6-4-005:020**

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 agricultural activities include the following:

- i. Since 1983, flowers, trees (approximately 10,000 sq. ft.) and grazing have been ongoing on the applicants' fee simple property. In addition, there is a 136 acre leasehold farm (Hawi Agricultural and Energy Corporation) in North Kohala with 15 acres under sod production with the balance leased for livestock grazing. The HAEC also produces and sells approximately 150,000 Kilowatt hours of electricity annually from its' hydroelectric plant.
- ii. Sod production since the year 2000 grossed about \$120,000.

(b) Proposed agricultural activities include the following:

- i. The planting of 5,000 sq. ft. of Christmas trees.
 - ii. Erection of 1,000 feet of new grazing fences.
 - iii. The Additional Farm Dwelling will be used to house the Farm Manager of the two locations. It is anticipated that the manager will work approximately 20 hours per week on the agricultural activities.
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)

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2. The subject lot was created prior to June 4, 1976 as Royal Patent 7398 and Land Court Award 4230, 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 30049423), 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 taxed.
4. In addition, the following agencies have submitted their comments as stated below:

(a) Department of Water Supply (Letter dated January 14, 2004):

"We have reviewed the subject application and have the following comments and conditions.

For your information, an existing 5/8-inch meter services this property and is adequate for only one dwelling at 600 gallons per day. This application is proposing an additional detached dwelling, so the installation of a separate 5/8-inch meter by the applicant is required in accordance with Department regulations. Water is available from the 6-inch waterline in the Road, which fronts the subject parcel. Therefore, the Department has no objections to the proposed 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 a maximum daily flow of 600 gallons as the existing service is.
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.

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3. Remittance of the following charges, which are subject to change, to our Customer Service Section:
- Facilities Charge (One 2nd service at \$5,500.00 each) \$5,500.00
 - Service Lateral Installation Charge
(Install one meter on a County road) 2,600.00
- Total (Subject to Change) \$8,100.00

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

- (b) Real Property Tax Office (per submitted tax clearance form dated December 3, 2003):

"This is to certify that the real property taxes due to the County of Hawaii on the parcel listed above have been paid up to and including December 31, 2003."

- (c) Department of Health (DOH) (Memorandum dated January 5, 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 property 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

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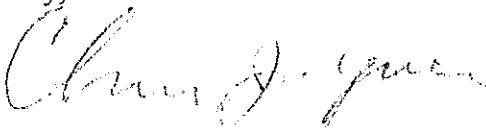
Stephen P. and Helen J. Bowles
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the additional dwelling until the AFDA document and all required attachments have been accepted for recordation.

3. The First Party shall arrange with the DWS for the payment of the Facilities and Service Lateral Installation Charges, the inspection of the backflow preventer and the installation of the new water meter.
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.
5. Your Additional Farm Dwelling Agreement has been approved based wholly on ongoing agricultural activity as summarized previously in this letter.
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 **January 31, 2006** may cause the Director to initiate proceedings to invalidate the AFDA.

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

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Stephen P. and Helen J. Bowles
Mauna Kea Orchards
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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: STEPHEN P. BOWLES and HELEN J. BOWLES

SECOND PARTY: COUNTY OF HAWAII

PROPERTY DESCRIPTION:

TMK: (3) 6-4-005:020

ADDITIONAL FARM DWELLING AGREEMENT

THIS AGREEMENT made and executed this 30th day of January, 2004, by and between **STEPHEN P. BOWLES and HELEN J. BOWLES**, herein called the "First Party," whose mailing address is P.O. Box 308, Hakalau, Hawaii 96710, 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) 2-9-003:048 situated within the State Land Use Agricultural district and zoned Agricultural (A-20a) 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.

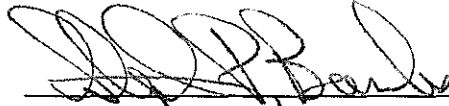
IT IS HEREBY FURTHER AGREED that should the pertinent provisions of the State and County laws and rules and regulations change to authorize said farm dwelling, upon request of the First Party, this Agreement may be reconsidered for possible amendment and/or severance.

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:



STEPHEN P. BOWLES, Legal Owner



HELEN J. BOWLES, Legal Owner

SECOND PARTY:

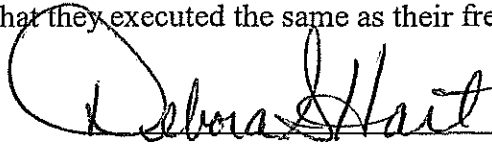


CHRISTOPHER J. YUEN, Planning Director
County of Hawaii Planning Department

STATE OF HAWAII
COUNTY OF HAWAII

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) SS.
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On this 13th day of September, 2004 before me personally appeared **STEPHEN P. BOWLES and HELEN J. BOWLES**, 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 DEBORA S. HART



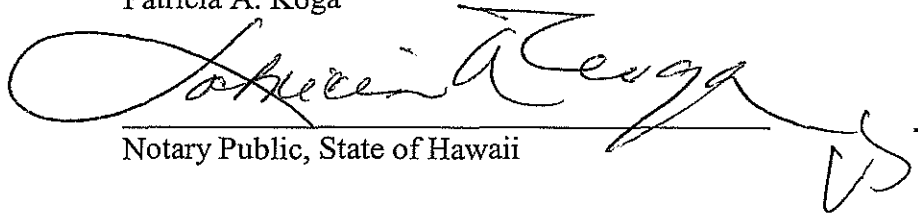
My commission expires: 4-1-2005

STATE OF HAWAII)
) SS
COUNTY OF HAWAII)

On this 18th day of October, 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

