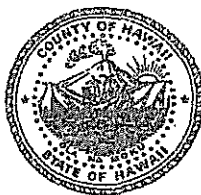


Harry Kim
Mayor



Christopher J. Yuen
Director

Roy R. Takemoto
Deputy Director

County of Hawaii

PLANNING DEPARTMENT

May 11, 2004

101 Pauahi Street, Suite 3 • Hilo, Hawaii 96720-3043
(808) 961-8288 • Fax (808) 961-8742

Brent A. and Jill A. Cullinan
104 Prospect Street
Honolulu, Hawaii 96813

Dear Mr. and Mrs. Cullinan:

Additional Farm Dwelling Agreement

Applicant: Brent A. Cullinan and Jill A. Cullinan
Land Owners: Brent A. Cullinan and Jill A. Cullinan
State Land Use: Agricultural
County Zoning: Agricultural (A-20a)
Land Area: 20.19-acres
Tax Map Key: (3) 2-6-028:014

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 re-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.

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.

Hawaii County is an equal opportunity provider and employer.

EXHIBIT

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Brent A. and Jill A. Cullinan

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The property has been divided into four sections for implementation of the farm plan.

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

(a) Ongoing agricultural activities include the following:

- i. Section one containing approximately nine acres is used to graze four horses with approximately one acre planted with Koa Sandalwood and Ohia trees. An 800,000-gallon fishpond for raising catfish has been excavated in this section as well.
- ii. Section two has three acres graded and mowed with one acre planted with tropical fruit trees including 45 Avocado, 40 coffee 15 lemon, 15 orange, 15 lime, 4 mango, 4 lychee and 12 coconut trees. Chickens will free range among the trees.
- iii. Section three is three acres of pasture for (presently) 3-head of Black Angus.
- iv. Section four will remain as stream and forest.

(b) Proposed agricultural activities include the following:

- v. Planting of more Koa, Sandalwood and Ohia in section one for a total of approximately 400 trees and the stocking of catfish for the Asian market.
- vi. Eventually all three acres of section two will be planted with fruit trees.
- vii. Eventually there will be a rotating stock of 4 to 6 heads of cattle in section three.

4. In support, proof of agricultural use assessment from RPT and numerous receipts for land clearing and fencing, a tractor with loader, mower and digger accessories, a U.S. Buildings 30'x20' building and \$1,867.29 of various fruit trees from Plant It Hawaii.
5. In additional support, evidence of a State of Hawaii Department of Taxation's General Excise (GE) Tax License has 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

EXHIBIT

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where agricultural activity provides income to the family occupying the dwelling.
(emphasis added)

2. The subject lot was created by subdivision (5341) approved on December 27, 1985, which, pursuant to HRS §205-4.5(b), requires the first dwelling on the lot to be a farm dwelling.
3. The Farm Plan, GE Tax License (ID number 10694421), 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 April 20, 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.

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) (Per submitted clearance form dated March 11, 2004 and appraisers report):

“This is to certify that the real property taxes due the County of Hawaii on the parcel listed above have been paid up to and including June 30, 2004.

Agricultural use assessment based on pasture use.”

- (c) Department of Health (DOH)(Memorandum dated April 23, 2004):

The use of individual wastewater systems is allowed. The type and number of individual wastewater systems to be used will be determined by the wastewater rules in effect at the time of building permit application.”

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Brent A. and Jill A. Cullinan

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Decision:

In view of the above, your request to construct a **second (first AFD) farm dwelling** on the subject 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 the additional dwelling until the AFDA document and all required attachments have been accepted for recordation.
3. The First Party shall verify with the DOH the type and number of individual wastewater systems that will be allowed on the property at the time building permits are to be applied for.
4. 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.
5. 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.
6. The First Party shall allow the Second Party or its representative to inspect the farm upon reasonable prior notice.

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Brent A. and Jill A. Cullinan

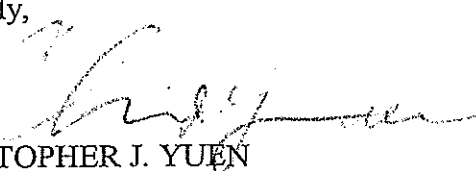
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7. This Additional Farm Dwelling Agreement shall be valid for a period of two (2) years from the date of this approval letter to secure a building permit for the additional farm dwelling. Failure to secure a building permit for this additional farm dwelling on or before May 12, 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

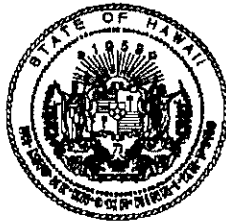
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Enclosure: AFDA document
AFDA document instruction sheet

xc: Mr. Milton Pavao, DWS
Mr. Mike McCall, RPT

EXHIBIT

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R-1058 STATE OF HAWAII
BUREAU OF CONVEYANCES
RECORDED
JUN 23, 2004 08:02 AM
Doc No(s) 2004-126998



/s/ CARL T. WATANABE
REGISTRAR OF CONVEYANCES

20 1/1 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: BRENT A. CULLINAN and JILL A. CULLINAN

SECOND PARTY: COUNTY OF HAWAII

PROPERTY DESCRIPTION:

TMK: (3) 2-6-028:014

ADDITIONAL FARM DWELLING AGREEMENT

THIS AGREEMENT made and executed this 11th day of May, 2004, by and between **BRENT A. CULLINAN and JILL A. CULLINAN**, herein called the "First Party," whose mailing address is 104 Prospect Street, Honolulu, Hawaii 96813, 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) 2-6-028:014 situated within the State Land Use Agricultural district and zoned Agricultural (A-40a) 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.

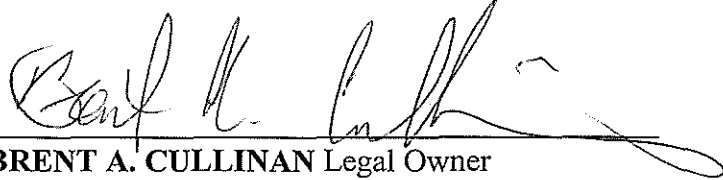
IT IS HEREBY FURTHER AGREED that should the pertinent provisions of the State and County laws and rules and regulations change to authorize said farm dwelling, upon request of the First Party, this Agreement may be reconsidered for possible amendment and/or severance.

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.

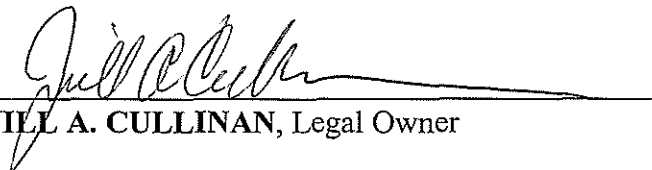
IN CONSIDERATION OF THE AFORESAID, the Second Party hereby approves this Agreement as being in conformity with Sections 205-2 and 205-4.5 of the Hawaii Revised Statutes, relative to permitted uses within the State Land Use Agricultural district. This Agreement is also in conformance with Chapter 25,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

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

FIRST PARTY:

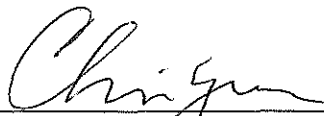


BRENT A. CULLINAN Legal Owner



JILL A. CULLINAN, Legal Owner

SECOND PARTY:



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

STATE OF HAWAII


)

) SS.

COUNTY OF HAWAII

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On this 18th day of May, 2004 before me personally appeared **BRENT A. CULLINAN and JILL A. CULLINAN** 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 HAWAII STUART A. LUM

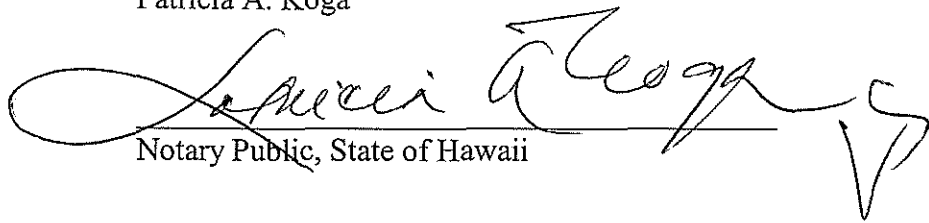
SL

My commission expires: April 21, 2007

STATE OF HAWAII)
) SS
COUNTY OF HAWAII)

On this 16th day of June, 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

TMK

2-6-028-014

Twin Fall Farms

