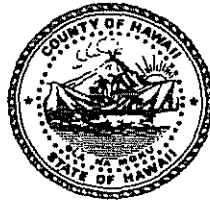


Harry Kim
Mayor



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 16, 2004

Klaus D. Conventz
Dba Baumeister Consulting
P.O. Box 2308
Kailua-Kona, Hawaii 96745-2308

Dear Mr. Conventz:

Additional Farm Dwelling Agreement
Applicant: Mark J. Enik
Owner: Mark J. Enik
State Land Use: Agricultural
County Zoning: Agricultural (A-5a)
Land Area: 7.2215 acres
TMK: (3) 8-2-008: 041

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. Proposed agricultural activities include the following:
 - i. Cultivate 1 acre of white pineapple, 4,000 fruits.

Hawai'i County is an equal opportunity provider and employer

EXHIBIT 'A'

- ii. Cultivate 1.5 acres of mango, 54 trees.
 - iii. Cultivate 24 other dwarf citrus trees such as Minneola Tangelo, Moro Blood Orange, Washington Navel Orange, Clementine, Dancy Tangerine, and Honey Mandarin on 0.5 acres.
- b. The labor man-hours are over 20 hours per week to maintain and harvest.
5. In additional support, evidence of an application for 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)
2. The subject lot is in the process of being modified by subdivision (SUB 2004-63) applied on April, 30, 2004, which, pursuant to HRS §205-4.5(b), will require the first dwelling on the lot to be a farm dwelling once the application has been finalized.
3. The Farm Plan, GE Tax License (ID number 30133237), 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 June 23, 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 400 gallons per day.

Inasmuch as this application is proposing an additional detached dwelling, the installation of a separate 5/8-inch meter by the applicant would normally be required in accordance with Department's regulations. However, as the parcel is out of the Department's service limits, second service is not available for the proposed additional farm dwelling.

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, should the application

Klaus D. Conventz for Mark J. Enik
July 16, 2004
Page 3

be approved, both dwellings shall not share the existing meter.

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) (Letter dated June 22, 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 entirely 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

EXHIBIT "A"

Klaus D. Conventz for Mark J. Enik
July 16, 2004
Page 4

to secure a building permit for this additional farm dwelling on or before July 17, 2006 may cause the Director to initiate proceedings to invalidate the AFDA.

7. The First Party shall not submit for a building permit to construct the additional farm dwelling until subdivision (SUB 2004-63) which was applied for on April 30, 2004, has been given final subdivision approval and recorded with the Bureau of Conveyances.

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
P:\afda\Kona AFDA\Approval\AFDAAp-8-2-8-41 Enik.doc

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: MARK J. ENIK

SECOND PARTY: COUNTY OF HAWAII

PROPERTY DESCRIPTION:

TMK: (3) 8-2-008:041

ADDITIONAL FARM DWELLING AGREEMENT

THIS AGREEMENT made and executed this 16th day of July, 2004, by and between MARK J. ENIK, herein called the "First Party," whose mailing address is P.O. Box 2419, Kealahou, Hawaii 96750, 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) 8-2-008:041 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.

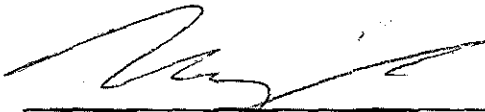
IT IS HEREBY FURTHER AGREED that should the pertinent provisions of the State and County laws and rules and regulations change to authorize said farm dwelling, upon request of the First Party, this Agreement may be reconsidered for possible amendment and/or severance.

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.

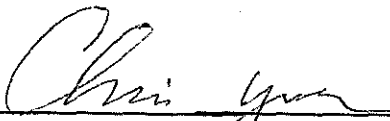
IN WITNESS WHEREOF, the parties have executed this agreement on the day and year first
above written.

FIRST PARTY:


7/26/04.

Mark J. Enik, Legal Owner

SECOND PARTY:



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

COMMONWEALTH OF MASSACHUSETTS

Nantucket, ss

On this 26th day of July, 2004, before me, the undersigned notary public, personally appeared Mark J. Enik, (a) personally known to me, or (b) proved to me through satisfactory evidence of identification, which were/ was his/her _____, to be the person whose name is signed on the preceding or attached document, and acknowledged to me that he/she signed it voluntarily for its stated purpose.

Lisa Frey

Notary Public

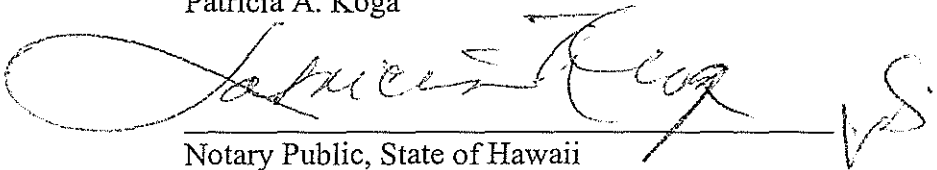
Printed Name: LISA FREY
My Commission Expires: 1-9-09



STATE OF HAWAII)
) SS
COUNTY OF HAWAII)

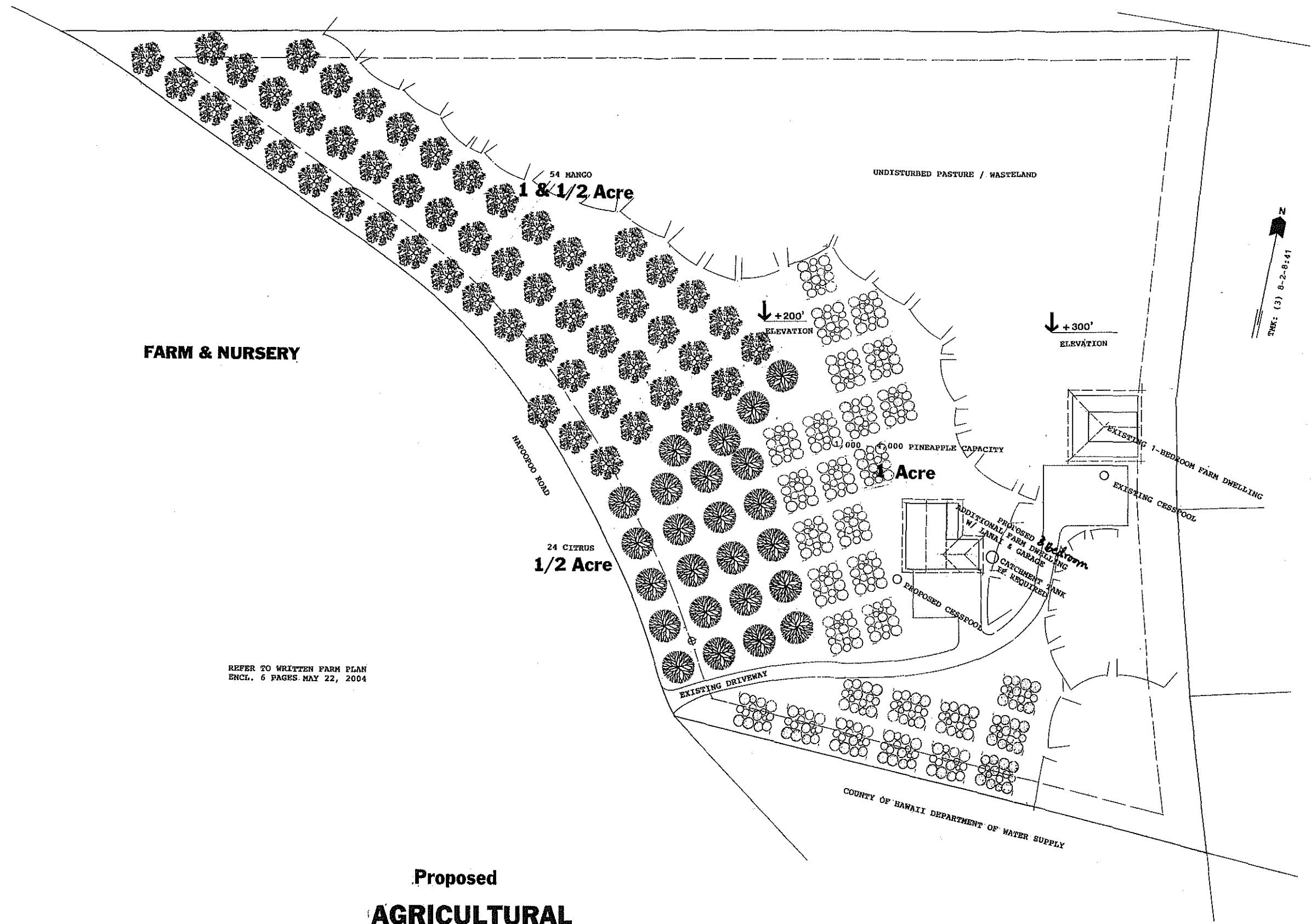
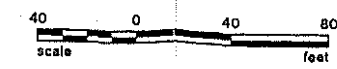
On this 25th day of August, 2004 before me personally appeared Christopher J. Yuen, to me personally known, who, being by me duly sworn, did say that he is the Planning Director of the County of Hawaii; and that the Planning Department of the County of Hawaii has no corporate seal; and that the instrument 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: _____



FARM & NURSERY

54 MANGO
1 & 1/2 Acre

24 CITRUS
1/2 Acre

UNDISTURBED PASTURE / WASTELAND

+200'
ELEVATION

+300'
ELEVATION

1,000 6,000 PINEAPPLE CAPACITY

3 Acre

EXISTING 1-BEDROOM FARM DWELLING
EXISTING CESSPOOL

PROPOSED 2-BEDROOM
ADDITIONAL FARM DWELLING
W/ LANA & GARAGE
PROPOSED CESSPOOL
CATCHMENT TANK
IF REQUIRED

EXISTING DRIVEWAY

COUNTY OF HAWAII DEPARTMENT OF WATER SUPPLY

REFER TO WRITTEN FARM PLAN
ENCL. 6 PAGES MAY 22, 2004

N
PKS: (3) 8-2-8-41

**Proposed
AGRICULTURAL
INVENTORY**

OWNER:

MARK J. ENIK
DBA KEALAKEUA FARM
P.O. BOX 2419
KEALAKEUA, HAWAII 96750
AGENT:
KLAUS D. CONVENTZ
DBA BAUMEISTER CONSULTING
P.O. BOX 2308