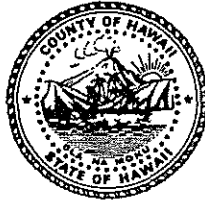


Harry Kim
Mayor



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

August 19, 2004

Jason and Billie Hauanio
73-4697 Kaloko Hills Drive
Kailua-Kona, Hawaii 96740

Dear Mr. & Mrs. Hauanio:

Additional Farm Dwelling Agreement

Applicant: Jason C. K. and Billie J. Hauanio
Owner: Jason C. K. and Billie J. Hauanio
Russell T. and Joan M. Brynjulson
State Land Use: Agricultural
County Zoning: Agricultural (A-3a)
Land Area: 3.016 acres
TMK: (3) 7-3-024:052

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:
 - i. Cultivate the following: 50 Ti plants, 20 Banana, and 5 Avocado.
 - ii. Cultivate popular garden plants such as impatiens, monstera, and heather.

- b. Proposed agricultural activities include the following:
 - i. Cultivate additional Ti plants for a total of 500 plants.
 - ii. Cultivate 30 additional banana.
 - iii. Cultivate 20 additional avocado.
 - iv. Cultivate 40 coffee trees
 - c. The present labor man-hours are approximately 60 per week to maintain and harvest, at full production the labor man-hours will be 80+ hours per week.
5. In additional support, 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 was created by subdivision (SUB 5364) approved on February 10, 1986, 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 30134878), 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 July 20, 2004):

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

For your information, the parcel has an existing 5/8-inch service with the Department, which is adequate for only one dwelling at an average of 400 gallons per day.

As this application indicates that there is farming activity on the parcel, the applicant shall have a licensed contractor install a backflow preventer (reduced pressure type) on the applicant’s property just after the existing meter. 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.

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 regulations. However, the Department's existing water system facilities cannot support an additional meter for the proposed additional farm dwelling at this time. Extensive improvements and additions, including source, storage, transmission, booster pumps, and distribution facilities, must be constructed. Currently, sufficient funding is not available and no time schedule is set.

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) (Letter dated July 8, 2004):

"Both CPR's are not receiving agricultural use assessments nor are agricultural use applications on file.

Status of real property taxes: Delinquent/Amounts \$2,854.05 for parcel 7-3-24-52-001 only amount includes tax, penalty, & interest up to July 31, 2004.

Parcel 7-3-24-52-002 is paid through June 30, 2004. Bill is attached for CPR '0001."

- c. Department of Health (DOH) (Letter dated July 21, 2004):

"WWB has no objections to the proposed project. However, as we have no information on existing wastewater systems, we are unable to provide comments. Please have your engineer or contractor submit a completed cesspool information card identifying the location of all wastewater systems and their relationship to existing and/or proposed property lines."

(Subsequent letter dated July 27, 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."

Decision:

In view of the above, your request to construct a **third 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.

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August 19, 2004
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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 August 20, 2006 may cause the Director to initiate proceedings to invalidate the AFDA.

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-8-7-10-19 RH Bennett.doc

Enclosure: AFDA document

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Page 5

AFDA document instruction sheet

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

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: JASON C. K. HAUANIO
 BILLIE J. HAUANIO
 RUSSELL T. BRYNJULSON
 JOAN M. BRYNJULSON**

SECOND PARTY: COUNTY OF HAWAII

PROPERTY DESCRIPTION:

TMK: (3) 7-3-024:052

ADDITIONAL FARM DWELLING AGREEMENT

THIS AGREEMENT made and executed this 19th day of August, 2004, by and between JASON C. K. HAUANIO, BILLIE J. HAUANIO, RUSSELL T. BRYNJULSON, and JOAN M. BRYNJULSON, herein called the "First Party," whose mailing address is 73-4697 Kaloko Hills 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 third farm dwelling located on the property described by Tax Map Key (3) 7-3-024:052 situated within the State Land Use Agricultural district and zoned Agricultural (A-3a) 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.

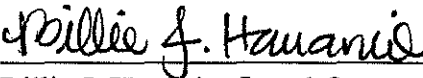
IN CONSIDERATION OF THE AFORESAID, the Second Party hereby approves this Agreement as being in conformity with Sections 205-2 and 205-4.5 of the Hawaii Revised Statutes, relative to permitted uses within the State Land Use Agricultural district. This Agreement is also in conformance with Chapter 25,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

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

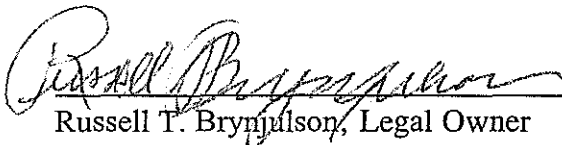
FIRST PARTY:



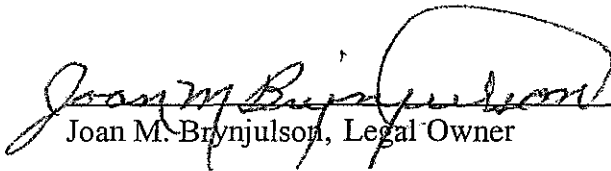
Jason C. K. Hauanio, Legal Owner



Billie J. Hauanio, Legal Owner

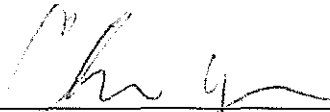


Russell T. Brynjulson, Legal Owner



Joan M. Brynjulson, Legal Owner

SECOND PARTY:

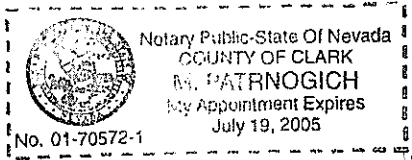


Christopher J. Yuen, Planning Director
County of Hawaii Planning Department

NEVADA

STATE OF HAWAII)
CLARK) SS.
COUNTY OF HAWAII)

On this 18th day of OCTOBER, 2004 before me personally appeared
~~JASON C. K. HAUANIO, BILLIE J. HAUANIO;~~ RUSSELL T. BRYNJULSON, and JOAN M.
BRYNJULSON 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.



M. Patrnogich
Notary Public, State of NEVADA

My commission expires: July 19, 05

STATE OF HAWAII)
COUNTY OF HAWAII) SS.

On this 27 day of OCTOBER, 2004 before me personally appeared
JASON C.K. HAUANIO and BILLIE J. HAUANIO to be 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.

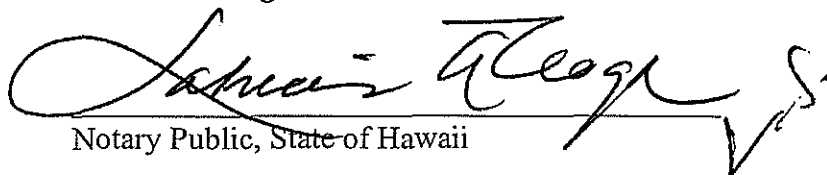
[Signature]
Notary Public State of HAWAII
My commission expires: 02-07-2007

LS

STATE OF HAWAII)
) SS
COUNTY OF HAWAII)

On this 11th day of November, 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: _____

No Map

In File.

Wha...?!