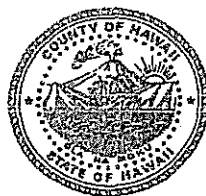


Harry Kim
Mayor



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

May 20, 2004

Mr. Raymond M. Ohara
410 Alawaena Street
Hilo, Hawaii 96720

Dear Mr. Ohara:

SUBJECT: Additional Farm Dwelling Agreement
Applicant: Raymond M. Ohara
Land Owners: Raymond M. Ohara and Caroline P. Ohara
State Land Use: Agricultural
County Zoning: Agricultural (A-3a)
Land Area: 21.497-acres
Tax Map Key: (3) 2-4-006:132

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 (AFD) 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.

Hawai'i County is an equal opportunity provider and employer.

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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 AFD 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. The farm has approximately 400 producing Macadamia nut trees.
- ii. Eight head of steers in six paddocks/corrals.
- iii. Approximately thirty chickens and three geese.
- iv. Present labor hours per week equals forty to fifty.

(b) Proposed agricultural activities include the following:

- i. Continuation of the above and;
- ii. The addition of another 300 Macadamia nut trees.

5. In support, evidence of a State of Hawaii Department of Taxation's General Excise (GE) Tax License has also been presented. Further evidence presented was an approved **agricultural use dedication** for 19 acres of the property. Said dedication was approved on July 1, 2001 and runs for a period of 10 years.

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)

The subject lot was created by subdivision (SUB 4459) approved on April 10, 1980, which, pursuant to HRS §205-4.5(b), requires the first dwelling on the lot to be a farm dwelling.

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2. The Farm Plan, GE Tax License (ID number 30061611) 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 being taxed.
3. In addition, the following agencies have submitted their comments as stated below:

(a) Department of Water Supply (DWS) (Memorandum dated April 20, 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 unit 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 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’s regulations. However, as the parcel is out of the Department’s service limits, second service is not available for the 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 be approved, both dwellings shall not share the existing meter.

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

(b) Real Property Tax Office (RPT) (Submitted Real Property Tax Clearance form dated March 18, 2004):

“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 June 30, 2004.”

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(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 will be determined by the wastewater rule in effect at the time of building permit application.”

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 AFD 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 AFD 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 AFDA 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 the Department of Water Supply memorandum that the AFD shall not share the existing meter with the first dwelling.

In reference to the DWS comment, may we suggest the following:

- a. Any dwelling not serviced by a County water system should be provided with and maintain a private potable rain catchment system which includes a minimum 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.
- b. Any farm dwelling should be provided with and maintain a private water supply system which includes an additional 3,000 gallon water storage capacity for fire fighting and emergency purposes. The emergency water supply system, including the necessary compatible connector system and location of the water storage

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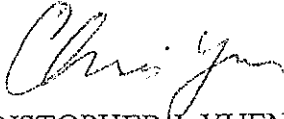
Mr. Raymond M. Ohara
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facility on the property, should meet with the approval of the Hawaii County Fire Department.

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 any other reviewing agencies/divisions listed on the Building Permit Application.
5. Your AFDA has been approved based on ongoing and expanded 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 AFDA shall be valid for a period of two (2) years from the date of this approval letter to secure a BP for the additional farm dwelling. Failure to secure a BP for this additional farm dwelling on or before November 25, 2005 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

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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: RAYMOND M. OHARA and CAROLINE P. OHARA

SECOND PARTY: COUNTY OF HAWAII

PROPERTY DESCRIPTION:

TMK: (3) 2-4-006:132

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

FIRST PARTY:

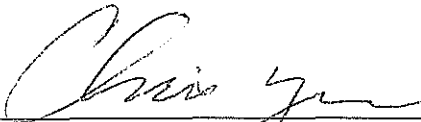


RAYMOND M. OHARA, Legal Owner



CAROLINE P. OHARA, Legal Owner

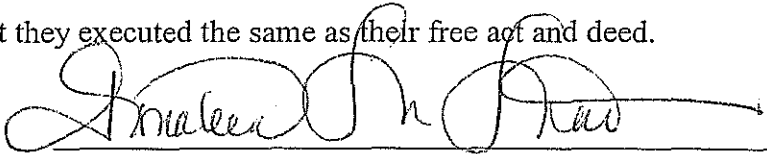
SECOND PARTY:



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

STATE OF HAWAII)
) SS.
COUNTY OF HAWAII)

On this 7 day of June, 2004 before me personally appeared **RAYMOND M. OHARA and CAROLINE P. OHARA** 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.


RONALD M. MATEO
Notary Public, State of HAWAII

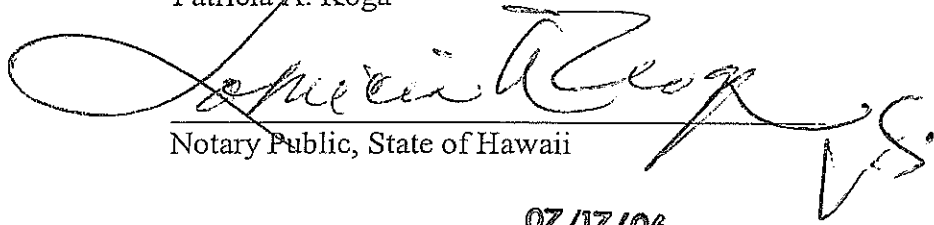


My commission expires: JUL 25 2007

STATE OF HAWAII)
) SS
COUNTY OF HAWAII)

On this 21st 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

07/17/06

My commission expires: _____

