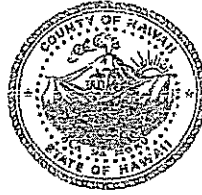


Harry Kim
Mayor



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

George and Toni Schattauer
P.O. Box 2300
Kealahou, Hawaii 96750

Dear Mr. and Mrs. Schattauer:

Additional Farm Dwelling Agreement Application

Applicants: George and Toni Schattauer
Land Owners: George Schattauer, Margaret Schattauer
and George Schattauer, Jr.
State Land Use: Agricultural
County Zoning: Agricultural (A-5a)
Land Area: 21.622-acres
Tax Map Key: (3) 7-9-007:014

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 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 AFD is needed in

EXHIBIT

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JAN 27 2004

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 pasturing of thirteen head of cattle. The boarding of horses. Plantings include avocado, macadamia nut, wild coffee, mango, apple bananas, lychee, oranges, pomelo, and starfruit.

(b) Proposed agricultural activities include the following:

- i. Continued existing activities and expansion of a half acre more of bananas.

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)

The subject lot was created prior to June 4, 1976, which, pursuant to HRS §205-4.5(b), allows the first dwelling on the lot to be a single-family dwelling.

2. The Farm Plan, GE Tax License (ID number 30122709), 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.
3. In addition, the following agencies have submitted their comments as stated below:

(a). Department of Water Supply (DWS): (Memorandum dated January 9, 2004)

EXHIBIT

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

For your information, an existing 1-inch meter services this property and is adequate for the existing dwelling and the proposed additional farm dwelling.

Therefore, the Department has no objections to the proposed application subject to the applicant understanding and accepting the following conditions:

1. Installation of a backflow preventer by a licensed contractor on the applicant's property just after each meter. As the existing water service is not fronting the subject parcel, please contact the Cross-Connection Section for more information on the location of the backflow preventer. The backflow preventer shall be operated and maintained by the customer. A copy of our backflow preventer handout is enclosed to the applicant to help them understand this requirement.

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

(b) Real Property Tax Office (RPT) (RPT clearance form dated November 17, 2003):

"This is to certify that G. Schattauer has paid all real property taxes due to the County of Hawaii up to and including December 31, 2003."

(c) Department of Health (DOH):

The DOH did not comment on this application as of this date.

Decision:

In view of the above, your request to construct a **second (first AFD) 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

EXHIBIT

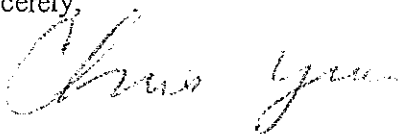
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be returned to the Planning Department with the appropriate notarized signatures along with a check made out to the Bureau of Conveyances in the amount of \$25.00 in accordance with the enclosed AFDA Instructions. The Planning Department will not approve a building permit application for the additional dwelling until the AFDA document and all required attachments have been accepted for recordation.

3. 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 AFDA has been approved based wholly on existing agricultural activity as summarized previously in this letter.
5. The First Party shall allow the Second Party or its representative to inspect the farm upon reasonable prior notice.
6. 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 **January 27, 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

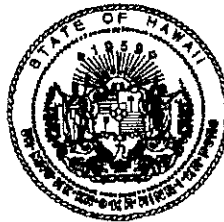
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George and Toni Schattauer
Page 5
January 26, 2004

xc: Planning Department - Kona

EXHIBIT

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R-1080

STATE OF HAWAII
BUREAU OF CONVEYANCES
RECORDED
MAR 02, 2004 08:02 AM

Doc No(s) 2004-043059



/s/ CARL T. WATANABE
REGISTRAR OF CONVEYANCES

20 11 Z2

N

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: GEORGE SCHATTAUER, MARGARET SCHATTAUER
and GEORGE SCHATTAUER JR.**

SECOND PARTY: COUNTY OF HAWAII

PROPERTY DESCRIPTION:

TMK: (3) 7-9-007:014

ADDITIONAL FARM DWELLING AGREEMENT

THIS AGREEMENT made and executed this 26th day of January, 2004, by and between **GEORGE SCHATTAUER, MARGARET SCHATTAUER and GEORGE SCHATTAUER JR.**, herein called the "First Party," whose mailing address is P.O. Box 2300, 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) 7-9-007:014 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:



GEORGE SCHATTAUER, Legal Owner




MARGARET SCHATTAUER, Legal Owner



GEORGE SCHATTAUER JR., Legal Owner


SECOND PARTY:



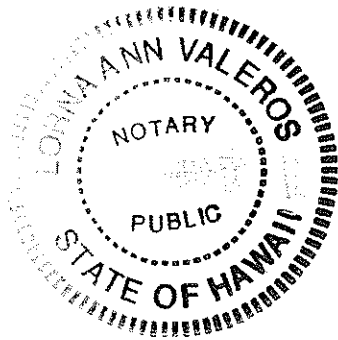
Christopher J. Yuen, Planning Director
County of Hawaii Planning Department

STATE OF HAWAII)
) SS.
COUNTY OF HAWAII)

On this 3rd day of FEBRUARY, 2004 before me personally appeared **GEORGE SCHATTAUER, MARGARET SCHATTAUER and GEORGE SCHATTAUER JR.**, 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.

 LORNA ANN VALEROS

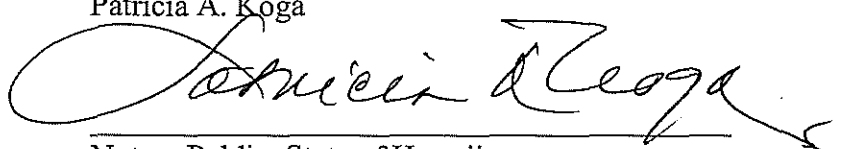
Notary Public, State of Hawaii



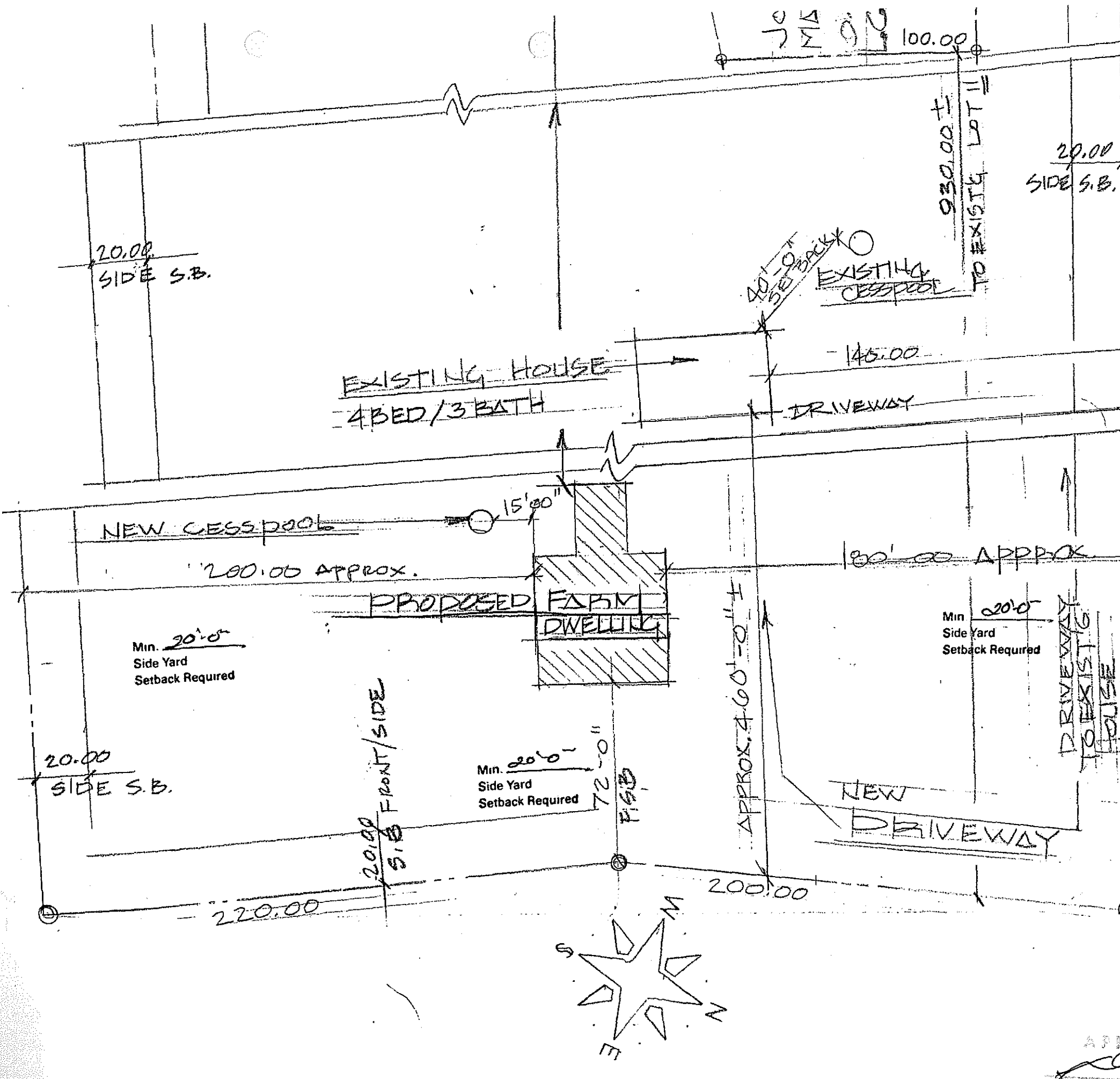
My commission expires: 05/22/05

STATE OF HAWAII)
) SS
COUNTY OF HAWAII)

On this 8th day of February, 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



GRADING: ALL EARTHWORK AND GRADING SHALL CONFORM TO CHAPTER 10 OF THE HAWAII COUNTY CODE. A PERMIT MAY BE REQUIRED FOR LOT GRUBBING AND/OR GRADING.

DRAINAGE: NO ADDITIONAL RAINFALL RUNOFF GENERATED BY THIS PROJECT SHALL BE DISPOSED OF ONTO COUNTY ROADWAYS OR ADJACENT PROPERTIES. ALL DRAINAGE IMPROVEMENTS SHALL CONFORM TO CHAPTER 27 OF THE HAWAII COUNTY CODE.

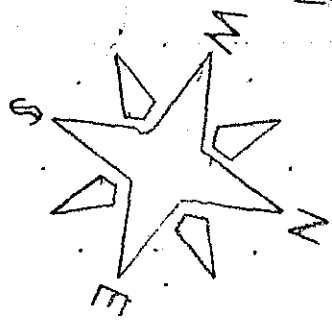
ROADWAY: CHECK WITH HIGHWAYS DIVISION IF ROADWAY IS MAINTAINED BY COUNTY OF HAWAII

DEPARTMENT OF PUBLIC WORKS
 ENGINEERING DIVISION
 REVIEWED BY: [Signature]
 DATE: MAR 10 2008

RECEIVED MILO
 This set of approved plans and specifications shall be kept on job site at all times during construction.

Date: _____
 APPROVED: _____
 BUILDING DIVISION CHIEF

40'-0" ROADWAY
 ESMT IN FAVOR
 OF M.A. SCAFFAUER
 T.M.K. 7-9-07:147



APPROVED [Signature]
 Director, County Planning Department

ADDITIONAL FARM DWELL
 SCHATTALERS FAMILY PROF
 TROIAN LUMBER COMPANY DATE: 08