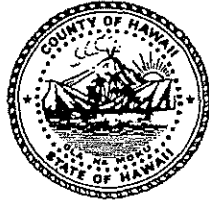


Harry Kim
Mayor



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

March 28, 2005

Avery & Edwina B. Simmons
83-5376 Middle Keei Rd.
Captain Cook, Hawaii 96704

Dear Mr. & Mrs. Simmons:

Additional Farm Dwelling Agreement Application (2005-0037)

Applicant: Avery & Edwina B. Simmons
Owner: Avery Simmons
Edwina Barnett Simmons
State Land Use: Agricultural
County Zoning: Agricultural (A-1a)
Land Area: 2.550 acres
TMK: (3) 8-3-010: 042

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. 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.
2. Written authorization of the landowner(s) if the lessee filed the request.
3. 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. Approximately 2.5 acres with 80 macadamia nut trees.

APR 01 2005

Avery & Edwina B. Simmons

March 28, 2005

Page 2

- b. Proposed agricultural activities include the following:
 - i. 1,200 coffee trees, planted in between the macadamia nut trees.
 - c. The on-going labor man-hours are approximately 11.1 hours per week to maintain and harvest. The proposed labor man-hours are approximately 22 hours per week to maintain and harvest. The total labor man-hours are approximately 33.1 hours per week.
4. In additional support, a State of Hawaii Department of Taxation's General Excise (GE) Tax License has also been presented.
 5. Applicant's commitment to the farm plan will be shown in the form of the enclosed Additional Farm Dwelling Agreement affidavit, to be notarized and submitted for recordation with the Bureau of Conveyances, which states that the additional dwelling shall be used for farm-related purposes.

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 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.
3. The Farm Plan, GE Tax License (ID number W68635485-01), 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 February 22, 2005):

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

For your information, an existing 5/8-inch meter services this property and is adequate for only one dwelling at an average of 400 gallons per day. This application is proposing an additional detached dwelling, so

the installation of a separate 5/8-inch meter by the applicants is required in accordance with the Department's Regulations. Water is available from the 8-inch waterline in Middle Keei Road, which fronts the subject parcel.

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

1. Installation, by the Department of Water Supply, of a second 1-inch service lateral to service a 5/8-inch meter, which shall be restricted to a maximum daily flow of 600 gallons.
2. Installation of a backflow preventer (reduced pressure type) by a licensed contractor on the applicant's property just after each meter. The installation and assembly of the backflow preventers must be inspected by the Department before the water meter can be installed. 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.
3. Remittance of the following charges, which are subject to change, to our Customer Service Section prior to the Planning Department's approval for the building permit for this application:

Facilities Charge	
(One 2 nd service at \$5,500.00 each)	\$5,500.00
Service Lateral Installation Charge	
<u>(Install one meter in Middle Keei Road, a county right-of-way)</u>	<u>2,600.00</u>
Total (Subject to Change)	\$8,100.00

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) (Memorandum dated February 25, 2005):
"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 (first AFD) dwelling** is subject to the following conditions:

Avery & Edwina B. Simmons

March 28, 2005

Page 4

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 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 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 March 29, 2007 may cause the Director to initiate proceedings to invalidate the AFDA.
7. The First Party or current owner/lessee shall submit proof of remittance of the Department of Water Supply Service Lateral Installation Charge with the submittal of a building permit application.

Avery & Edwina B. Simmons
March 28, 2005
Page 5

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-8-3-10-42 Simmons.doc

Enclosure: AFDA document
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: AVERY SIMMONS
 EDWINA BARNETT SIMMONS**

SECOND PARTY: COUNTY OF HAWAII

PROPERTY DESCRIPTION:

TMK: (3) 8-3-010:042

ADDITIONAL FARM DWELLING AGREEMENT

THIS AGREEMENT made and executed this 28th day of March, 2005, by and between AVERY SIMMONS and EDWINA BARNETT SIMMONS, herein called the "First Party," whose mailing address is 83-5376 Middle Keel Road, Captain Cook, Hawaii 96704, 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) 8-3-010:042 situated within the State Land Use Agricultural district and zoned Agricultural (A-1a) 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:

Avery Simmons, Legal Owner

Edwina Barnett Simmons, Legal Owner

SECOND PARTY:

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

STATE OF HAWAII)
) SS.
COUNTY OF HAWAII)

On this _____ day of _____, 200__ before me personally appeared AVERY SIMMONS and EDWINA BARNETT SIMMONS to me known to be the person 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 _____

My commission expires: _____

STATE OF HAWAII)
) SS
COUNTY OF HAWAII)

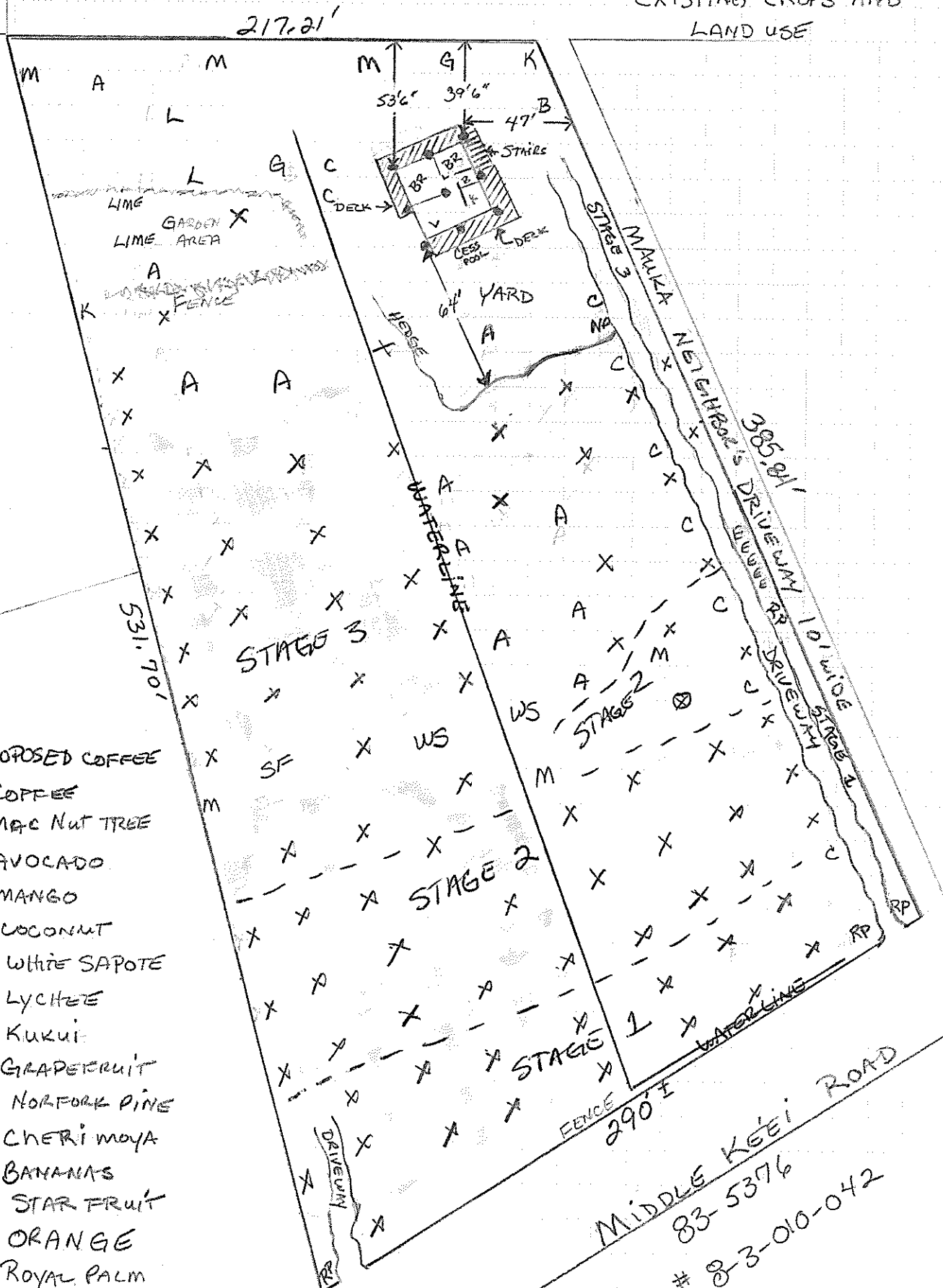
On this ____ day of _____, 2005 before me personally appeared Christopher J. Yuen, to me personally known, who, being by me duly sworn, did say that he is the Planning Director of the County of Hawaii; and that the Planning Department of the County of Hawaii has no corporate seal; and that the instrument 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: _____

EXISTING CROPS AND LAND USE



PROPOSED COFFEE

- E - COFFEE
- X - MAC NUT TREE
- A - AVOCADO
- M - MANGO
- C - COCONUT
- WS - WHITE SAPOTE
- L - LYCHEE
- K - KUKUI
- G - GRAPEFRUIT
- NP - NORFOLK PINE
- C - CHERIMOYA
- B - BANANAS
- SF - STAR FRUIT
- O - ORANGE
- RP - ROYAL PALM

MIDDLE KEEI ROAD
83-5376

TMK # 8-3-010-042