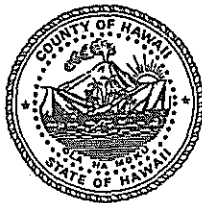


Harry Kim  
Mayor



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

July 17, 2005

Mr. Shawn Anthony Souza  
P.O. Box 52  
Paauilo, Hawaii 96776

Dear Mr. Souza:

**SUBJECT: Additional Farm Dwelling Agreement (2005-0064a)**  
**Applicant: Shawn Anthony Souza**  
**Land Owners: Edward V. Souza and Shawn Anthony Souza**  
**State Land Use: Agricultural**  
**County Zoning: A-5a**  
**Land Area: 4.32 Acres**  
**Tax Map Key: (3) 4-3-015:003**

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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. Names, address and signatures of the landowners.
2. A farm plan or evidence of the applicant's proposed 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.

*Hawaii County is an equal opportunity provider and employer.*

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Mr. Shawn Anthony Souza  
June 17, 2005  
Page 2

Your farm plan included the following ongoing and proposed income producing agricultural activities:

(a) Ongoing agricultural activities include:

- i. The parcel has been extensively fenced and is presently in pasture.
- ii. Approximately 14 of 28 head of cattle are on this parcel with the other 14 head on leased land.
- iii. There are presently thirty mature, bearing coffee trees with 200 plus more trees just now coming to bear.

(b) Proposed agricultural activities include:

- i. Planting of approximately 200 more coffee trees and various ornamentals (such as hibiscus and spider lily). Further paddocking of the rangeland for ease of caring for the cattle.

(c) Labor man-hours for the existing activity are 16 per week. With the implemented program and the man-hours averaged over the year, the total per week average is expected to be, at a minimum, 40.

3. 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 as Land Patent 11,164 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.

Mr. Shawn Anthony Souza  
July 17, 2005  
Page 3

3. The Farm Plan, Hawaii G.E. Tax license (GE ID Number 30133932) 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 that 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 20, 2005):

“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 an average of 400 gallons a 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 the Department’s 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, and distribution facilities, must be constructed. Currently, sufficient funding is not available and no time schedule is set

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 must 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) (Web sit inquiry):

“No taxes due.”

(c) Department of Health (DOH) (Memorandum dated June 22, 2005):

“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.”

Mr. Anthony Shawn Souza

July 17, 2005

Page 4

Decision:

In view of the above, your request to construct a **second (first AFD) farm dwelling is approved** 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 comply with 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 on ongoing and expanded 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. The applicant must secure a building permit for the additional farm dwelling within that time. Failure to secure a building permit for this additional farm dwelling on or before July 18, 2007 may cause the Director to initiate proceedings to invalidate the AFDA.

Mr. Shawn Anthony Souza

July 17, 2005

Page 5

7. 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 dwelling on a water catchment system should be provided with and maintain 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 facility on the property, should meet with the approval of the Hawaii County Fire Department.

Should you have any questions, please contact Jonathan Holmes of this office.

Sincerely,



CHRISTOPHER J. YUEN  
Planning Director

JRH: je

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Enclosures: 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

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TITLE OF DOCUMENT:

**ADDITIONAL FARM DWELLING AGREEMENT**

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PARTIES TO DOCUMENT:

**FIRST PARTY: EDWARD V. SOUZA**

**SECOND PARTY: COUNTY OF HAWAII**

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PROPERTY DESCRIPTION:

**TMK: (3) 4-3-015:003**

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## ADDITIONAL FARM DWELLING AGREEMENT

THIS AGREEMENT made and executed this 12<sup>th</sup> day of June 2005, by and between **EDWARD V. SOUZA**, herein called the "First Party," whose mailing address is P.O. Box 52, Paauilo, Hawaii 96776 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) 4-3-015:003 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:

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**EDWARD V. SOUZA**, Legal Owner

SECOND PARTY:

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

STATE OF HAWAII

)

) SS.

COUNTY OF HAWAII

)

On this \_\_\_\_\_ day of \_\_\_\_\_, 2005 before me personally appeared **EDWARD V. SOUZA**, to me known to be the person described in and who executed the foregoing instrument, and acknowledged that he executed the same as his free act and deed.

\_\_\_\_\_

Notary Public, State of \_\_\_\_\_

My commission expires: \_\_\_\_\_

STATE OF HAWAII            )  
  ) SS  
COUNTY OF HAWAII        )

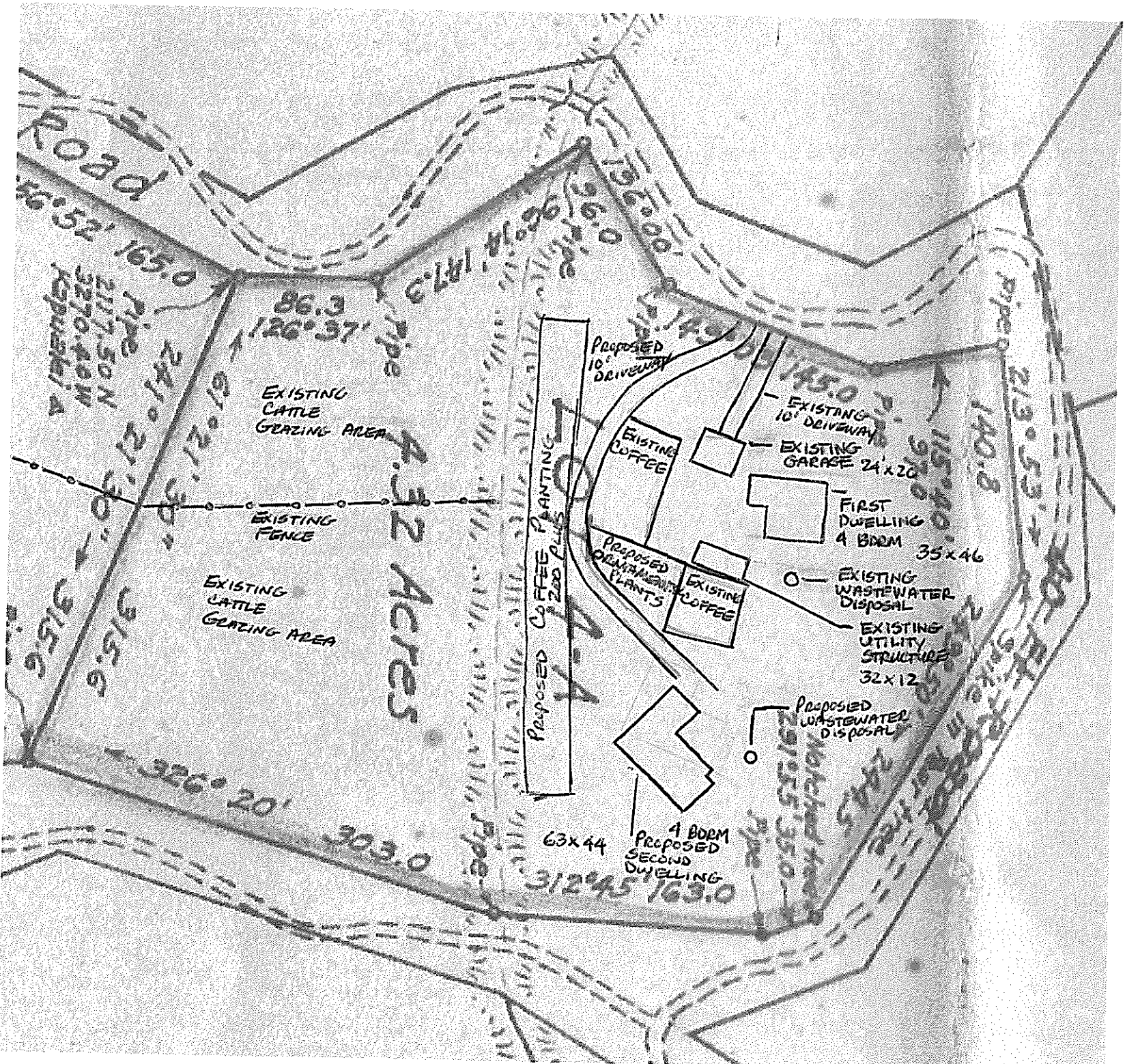
On this \_\_\_\_ day of \_\_\_\_\_, 2005 before me personally appeared

**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: \_\_\_\_\_



165.0  
167.5  
217.50 N  
227.00 W  
Kpukhi/A

126° 37'

EXISTING CATTLE GRAZING AREA

EXISTING FENCE

EXISTING CATTLE GRAZING AREA

4.32 Acres

Proposed Coffee Planting 200 Plus

Proposed 10' Driveway

EXISTING COFFEE

EXISTING GARAGE 24x20

FIRST DWELLING 35x46  
4 BDM

EXISTING WASTEWATER DISPOSAL

EXISTING UTILITY STRUCTURE 32x12

Proposed WASTEWATER DISPOSAL

Proposed ORNAMENTAL PLANTS

EXISTING COFFEE

63x44  
Proposed SECOND DWELLING  
4 BDM

Notched for 2015/15/35.0

326° 20'

303.0

3/245/63.0

Pipe 213° 53' 7"

140.8

EXISTING 10' DRIVEWAY

EXISTING GARAGE 24x20

FIRST DWELLING 35x46  
4 BDM

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