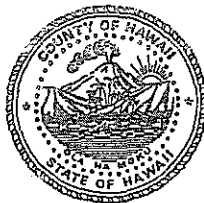


Harry Kim
Mayor



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

September 5, 2005

Mr. Lawrence J. Martinez Jr.
P.O. Box 313
Paauilo, Hawaii 96776

Dear Mr. Martinez Jr.:

SUBJECT: Additional Farm Dwelling Agreement (fda-05-000074)
Applicants: Lawrence J. Martinez Jr.
Land Owners: Lawrence J. Martinez Jr.
State Land Use: Agricultural
County Zoning: A-5a
Land Area: 4.587 Acres
Tax Map Key: (3) 4-4-008:031

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, address and signature of the applicant and landowners.
2. 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 income producing agricultural activities:

- (a) Ongoing agricultural activities include the following:

Hawai'i County is an equal opportunity provider and employer

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- i. The Property currently has 200 macadamia nut trees and 30 avocado trees along with miscellaneous other fruit trees including plum, guava, sapote, sousop, orange and peach.
- ii. The applicant states that he leases 135 acres that grazes about 40 cows.

(b) Proposed agricultural activities include the following:

- i. The planting of additional fruit trees (rambutan) and coffee.
3. In support, numerous receipts for farm expenses and sales of products have been presented. Also, evidence of a State of Hawaii Department of Taxation's General Excise (GE) Tax License has been presented
 4. 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 30019175), 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 that the income has been taxed.
4. In addition, the following agencies have submitted their comments as stated below:
 - (a) Department of Water Supply (DWS) (Letter dated August 10, 2005):

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“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 per 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 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, 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 applicants understanding and accepting that the Department cannot provide water service to the proposed additional farm dwelling. Further, should the application be approved, both dwelling 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 Site Inquiry):

“No Taxes Due.” and “Agricultural Use.”

(c) Department of Health (DOH) (Memorandum dated August 31, 2005):

“The use of individual wastewater systems is allowed. The type and number of individual wastewater systems to be used on a lot 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 **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

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Mr. Lawrence J. Martinez Jr.

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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. 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.
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 other reviewing agencies/divisions listed on the Building Permit Application shall be adhered to.
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

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letter to secure a BP for the additional farm dwelling. Failure to secure a BP for this additional farm dwelling on or before September 6, 2007 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:mad

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Enclosures: AFDA document
AFDA document instruction sheet

xc: Mr. Milton Pavao, DWS
Mr. Mike McCall, RPT

EXHIBIT
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R-806 STATE OF HAWAII
BUREAU OF CONVEYANCES
RECORDED
OCT 19, 2005 08:02 AM
Doc No(s) 2005-212761



/s/ CARL T. WATANABE
REGISTRAR OF CONVEYANCES

20 1/1 23

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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: LAWRENCE J. MARTINEZ JR.

SECOND PARTY: COUNTY OF HAWAII

PROPERTY DESCRIPTION:

TMK: (3) 4-4-008:031

ADDITIONAL FARM DWELLING AGREEMENT

THIS AGREEMENT made and executed this 5th day of September, 2005, by and between **LAWRENCE J. MARTINEZ JR.**, herein called the "First Party," whose mailing address is P.O. Box 313, 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) 4-4-008:031 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 owners 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:



LAWRENCE J. MARTINEZ JR., Legal Owner

SECOND PARTY:



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

STATE OF HAWAII


)

) SS.

COUNTY OF HAWAII

)

On this 19th day of September, 2005 before me personally appeared **LAWRENCE J. MARTINEZ JR.** 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.


SHARON T. ROQUE
Notary Public, State of Hawaii

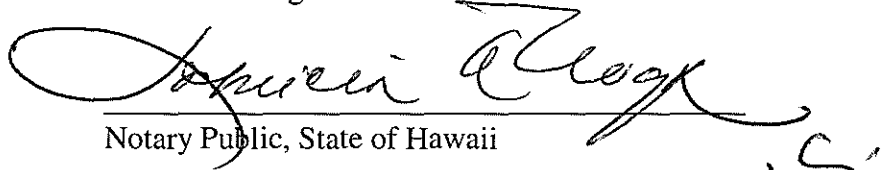
L.S.

My commission expires: 11/7/08

STATE OF HAWAII)
) SS
COUNTY OF HAWAII)

On this 13th day of October, 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

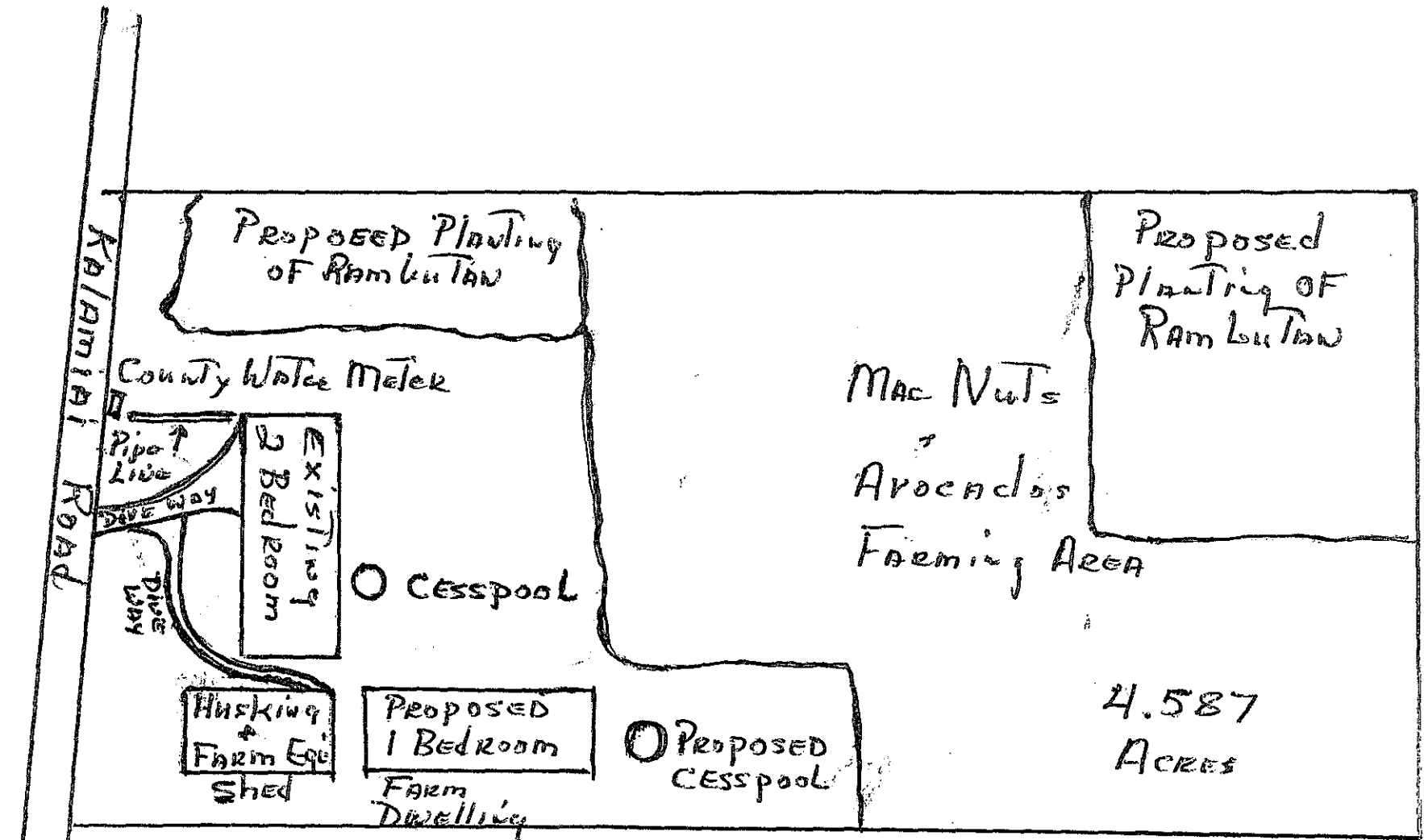


Notary Public, State of Hawaii

07/17/06

My commission expires: _____

VS



PILOT PLAN
 Proposed Farm Dwelling
 For
 LAWRENCE J. MARTINEZ
 TMR 344008 031 0000 000