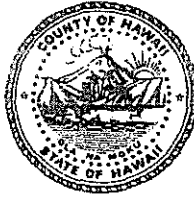


Harry Kim
Mayor



Christopher J. Yuen
Director

Brad Kurokawa, ASLA
LEED® AP
Deputy Director

County of Hawaii
PLANNING DEPARTMENT

101 Pauahi Street, Suite 3 • Hilo, Hawaii 96720-3043
(808) 961-8288 • FAX (808) 961-8742

June 5, 2007

Mr. Albert Bee, Jr.
P.O. Box 1279
Kea'au, Hawai'i 96749

Dear Mr. Bee, Jr.:

SUBJECT: Additional Farm Dwelling Agreement (FDA-07-000166)
Applicant: Albert Bee, Jr.
Land Owner: Albert Bee, Jr.
State Land Use: Agricultural
County Zoning: A-1a
Land Area: 4.705 Acres
Tax Map Key: (3) 1-7-018:028

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 the signature of the landowner.
2. A farm plan or evidence of the applicants' 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:

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- i. The property has approximately 1 ½ acres of fenced area. Since 1996 through 2006 the applicant has been raising "hair" sheep.
 - ii. The present herds are young and require substantial expenditures of money and time (grooming, hand feeding newborns, etc.).
 - iii. A portion of the property is also utilized for grazing of a neighbors cattle.
- b. Proposed agricultural activities include the following:
 - i. The fencing will be expanded to at least 2 acres now and eventually the whole 4.7 acres will be fenced to expand the herds of sheep and goats. The sheep's wool is to be sold as well as live and slaughtered animals.
 - ii. Additional income will be derived from taro and ti leaves.
 - iii. It is anticipated that the agricultural operation will continue to entail about 30 to 35 man-hours per week for the general care and maintenance of the herds.
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, Hawai'i 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 by subdivision (SUB 5176) approved on October 24, 1984, which, pursuant to HRS §205-4.5(b), requires the first dwelling on the lot to be a farm dwelling.
3. The Farm Plan 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.
4. In addition, the following agencies have submitted their comments as stated below:

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a. Department of Water Supply (DWS) (Letter dated May 29, 2007):

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

Please be informed that an existing 5/8-inch meter services the subject parcel, which is adequate for only one dwelling unit and limited to an average of 400 gallons per day. Inasmuch as this application is proposing an additional dwelling, the installation of a separate 5/8-inch meter would normally be required in accordance with the Department's regulations. However, the Department's existing water system facilities cannot support additional meters at this time. Extensive improvements and additions, which may include, but not be limited to source, storage, booster pumps, transmission, and distribution facilities, would be required. Currently, sufficient funding is not available from the Department for such improvements and no time schedule is set.

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. Should the application be approved, both dwellings must not share the existing meter, and the water system plumbing between the two dwellings shall not be interconnected in any way.

Further, as the applicant indicates that there is existing and proposed agricultural activity within the subject parcel, a reduced pressure type backflow prevention assembly must be installed within five (5) feet of the existing meter on private property. The installation of the backflow prevention assembly must be inspected and approved by the Department before commencement of water service. A copy of the Department's backflow prevention handout will be sent to the applicant to help them understand this requirement.

Should there be any questions, please call Mr. Ryan Quitarano of our Water Resources and Planning Branch at 961-8070, extension 256."

b. Real Property Tax Office (RPT): (Response form dated May 7, 2007):

"There are no comments at this time. Real Property taxes are paid through June 30, 2007."

c. Department of Health (DOH) (Memorandum dated May 10, 2007):

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"The use of individual wastewater systems is allowed. The type and number of individual wastewater systems will be determined by the wastewater rules in effect at the time of building permit application.

The Department of Health's Safe Drinking Water Branch authority on drinking water quality is based on the definition of a 'public water system'. A 'public water system' means a system which provide water for human consumption through pipe or other constructed conveyance if such system has fifteen (15) service connections or regularly serves an average of at least twenty-five (25) individuals daily at least sixty (60) days out of the year. All public water systems are regulated by the Department of Health and shall be in compliance with the Hawai'i Administrative Rules, Title 11, Chapter 20. Recommend the subdivision lots be connected to an existing public water system.

Concerns on water quality for lead, copper, algae and microbial and chemical contaminations in private water systems have identified the need for self monitoring. The Department of Health does not support the use of these private rain catchment systems for drinking purposes since the quality may not meet potable water standards.

We recommend that you review all of the Standard Comments on our website: www.state.hi.us/health/environmental/env-planning/landuse/landuse.htm. Any comments specifically applicable to this project should be adhered to."

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.

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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 Hawai'i 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 (BP) Application shall be adhered to.
5. 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 (property owners) 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 Hawai'i Planning Department) of the Agreement may allow time extensions and modifications for good cause shown by the First Party.
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 June 6, 2007 may cause the Director to initiate proceedings to invalidate the AFDA.
8. The First Party is required to comply with all requirements of the State and Federal taxation authorities as regards income derived from the agricultural activity.

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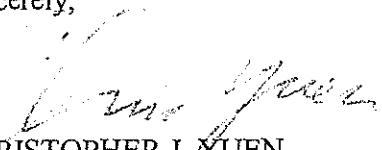
Mr. Albert Bee, Jr.

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June 5, 2007

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:cd

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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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THE ORIGINAL OF THE DOCUMENT
RECORDED AS FOLLOWS:
STATE OF HAWAII

BUREAU OF CONVEYANCES

Doc 2007-123614
JUL 11, 2007 08:02 AM

AFTER RECORDATION, RETURN BY MAIL TO:

County of Hawai'i Planning Department
101 Pauahi Street, Suite 3
Hilo, Hawai'i 96720

TITLE OF DOCUMENT:

ADDITIONAL FARM DWELLING AGREEMENT

PARTIES TO DOCUMENT:

FIRST PARTY: ALBERT BEE, JR.

SECOND PARTY: COUNTY OF HAWAI'I

PROPERTY DESCRIPTION:

TMK: (3) 1-7-018:028

ADDITIONAL FARM DWELLING AGREEMENT

THIS AGREEMENT made and executed this 5th day of June, 2007, by and between **ALBERT BEE, JR.**, herein called the "First Party," whose mailing address is P.O. Box 1279, Kea'au, Hawai'i 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) 1-7-018:028 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, Hawai'i 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, Hawai'i 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 Hawai'i Revised Statutes, relative to permitted uses within the State Land Use Agricultural district. This Agreement is also in conformance with Chapter 25, Hawai'i County Code, as amended.

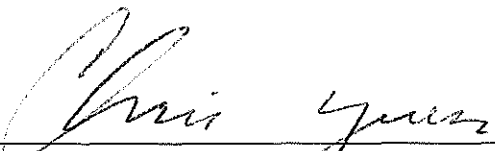
IN WITNESS WHEREOF, the parties have executed this agreement on the day and year first above written.

FIRST PARTY:



ALBERT BEE, JR., Legal Owner

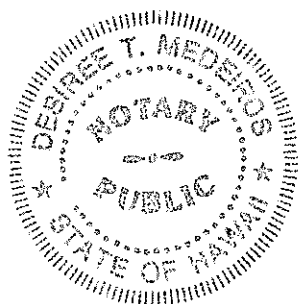
SECOND PARTY:



CHRISTOPHER J. YUEN, Planning Director
County of Hawai'i Planning Department

STATE OF HAWAII)
) SS.
COUNTY OF HAWAII)

On this 12th day of June, 2007 before me personally
appeared **ALBERT BEE, 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.



Desiree T. Medeiros Desiree T. Medeiros

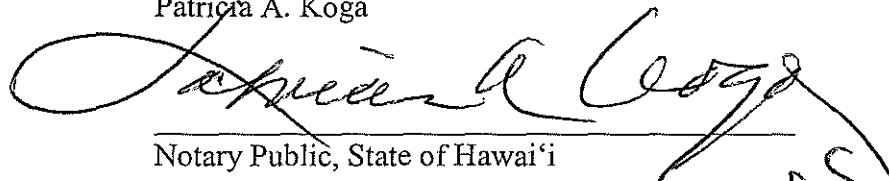
Notary Public, State of Hawaii
Third Judicial Circuit

My commission expires: 6-14-2008


STATE OF HAWAI'I)
) SS
COUNTY OF HAWAI'I)

On this 5th day of July, 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 Hawai'i; and that the Planning Department of the County of Hawai'i has no corporate seal; and that the instrument was signed on behalf of the Planning Department of the County of Hawai'i, a government agency, and said **CHRISTOPHER J. YUEN** acknowledged the instrument to be the free act and deed of said Planning Department, County of Hawai'i.

Patricia A. Koga



Notary Public, State of Hawai'i

My commission expires: 07/17/10 

DEPARTMENT OF PUBLIC WORKS

ENGINEERING DIVISION

DRIVEWAY: IN ACCORDANCE WITH CHAPTER 22 OF THE HAWAII COUNTY CODE, A PERMIT SHALL BE OBTAINED FOR DRIVEWAY CONSTRUCTION WORK WITHIN THE COUNTY ROAD RIGHT-OF-WAY.

Required

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

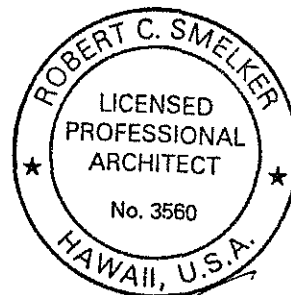
DEPARTMENT OF PUBLIC WORKS

ENGINEERING DIVISION

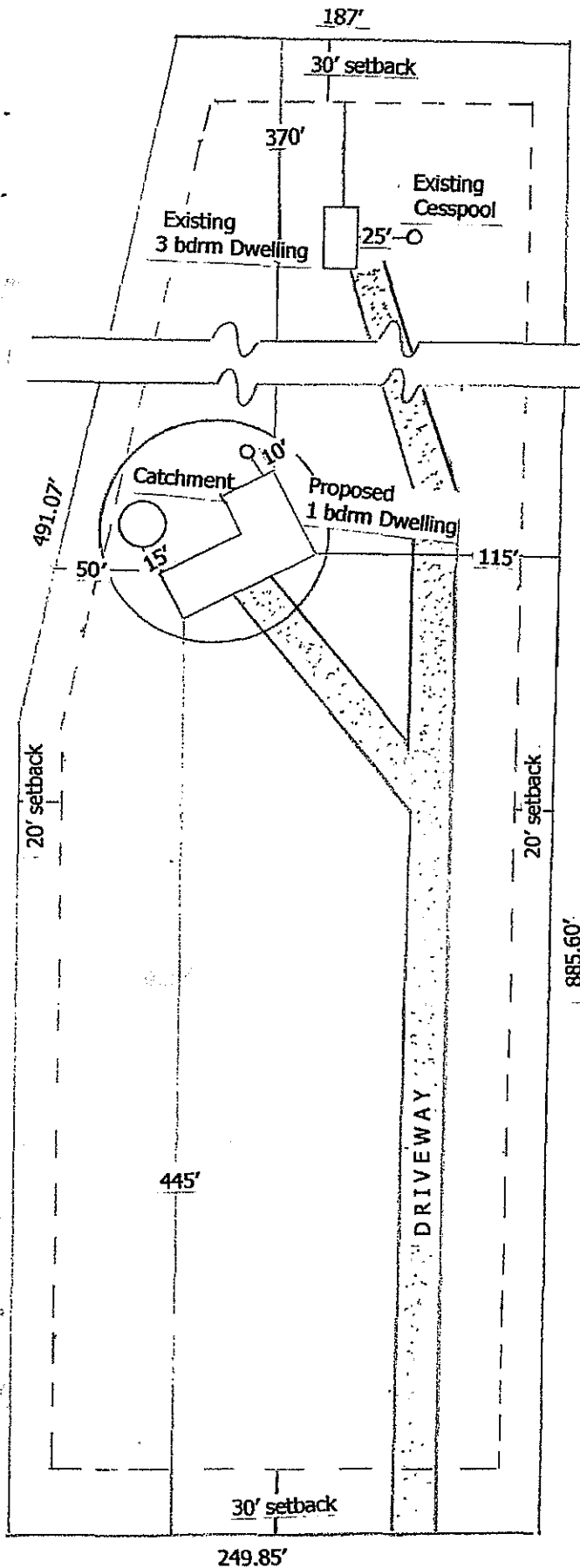
REVIEWED BY: *[Signature]*

DATE: FEB 16 2007

Bee, Albert
TMK # (3) 1-7-018:028
Huina Road – Kurtistown
4.705 Acres
SC: 1" = 80'
Page 1 of 2



THIS WORK WAS PREPARED BY ME
OR UNDER MY SUPERVISION AND
CONSTRUCTION OF THIS PROJECT
WILL BE UNDER MY OBSERVATION.



Huina Road