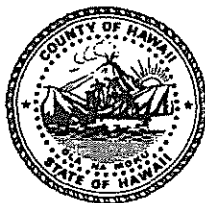


Harry Kim
Mayor



Christopher J. Yuen
Director

Brad Kurokawa, ASLA, LEED™ AP
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

April 30, 2008

Mr. and Mrs. Glenn Oshiro
46-3615 Kahana Drive
Honoka'a, Hawai'i 96727

Dear Mr. and Mrs. Oshiro:

SUBJECT: Additional Farm Dwelling Agreement (FDA-08-000207)
Applicants: Glenn and Kathy Oshiro
Land Owners: Glenn and Kathy Oshiro
State Land Use: Agricultural
County Zoning: A-5a
Land Area: 28.66 Acres
Tax Map Key: (3) 4-6-010:014

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. Names, address and the signatures of the applicants/landowners.
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:
 - i. 20 acres are devoted to goat and sheep raising;

MAY 01 2008

- ii. 8 acres are in waiawi (hundreds), guava (eight) and poha berries (several bushes);
and
 - iii. A minimum of eight (8) hours per week are required for the various chores related to the care of the goats and sheep and maintenance of the fencing, etc.
- b. Proposed agricultural activities include the following:
- i. Additional sheep and goats;
 - ii. Marketing and expansion of the waiawi, guava and poha berries;
 - iii. Additional truck crops such as lettuce, beets and broccoli, etc.; and
 - iv. Average man hours of 28-30 per week are anticipated.
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 4074) approved on March 14, 1978, which, pursuant to HRS §205-4.5(b), requires the first dwelling on the lot to be a farm dwelling.
3. The Farm Plan, evidence of a State of Hawaii General Excise Tax license (#W40835812) 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:
 - a. Department of Water Supply (DWS) (Letter dated March 14, 2008):

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

Please be informed that an existing 5/8-inch meter services this property and is adequate for only one dwelling unit at 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 an additional water meter at this time as the subject parcel is located at an elevation such that the Department cannot provide adequate pressure. 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.

Therefore, the Department has no objections to the proposed application, subject to the applicant understanding and accepting that the Department cannot provide service to the proposed additional farm dwelling. Further, should the application be approved, both dwellings shall not share the existing meter and the plumbing between both dwellings shall not share the existing meter.

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 (if one does not already exist). 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):

RPT did not comment on this application as of this date.

c. Department of Health (DOH) (Memorandum dated March 7, 2008):

“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.

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:

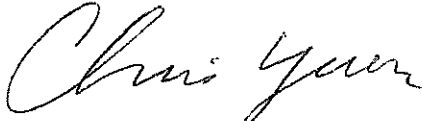
1. The AFD shall only be used to provide shelter for persons involved in the agricultural or farm-related activity on the building site. Family members who are not engaged in agricultural or farm-related activities are allowed to reside in the farm dwelling.
2. The agreement shall run with the land and 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.
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.

Mr. and Mrs. Glenn Oshiro
Page 5
April 30, 2008

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 April 30, 2010 may cause the Director to initiate proceedings to invalidate the AFDA.
8. Approval of this AFDA renders an Ohana Dwelling Permit, issued on December 21, 1992, null and void.

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

O:\AFDA\AFDA\JRH\apvl\OshiroApvl.doc

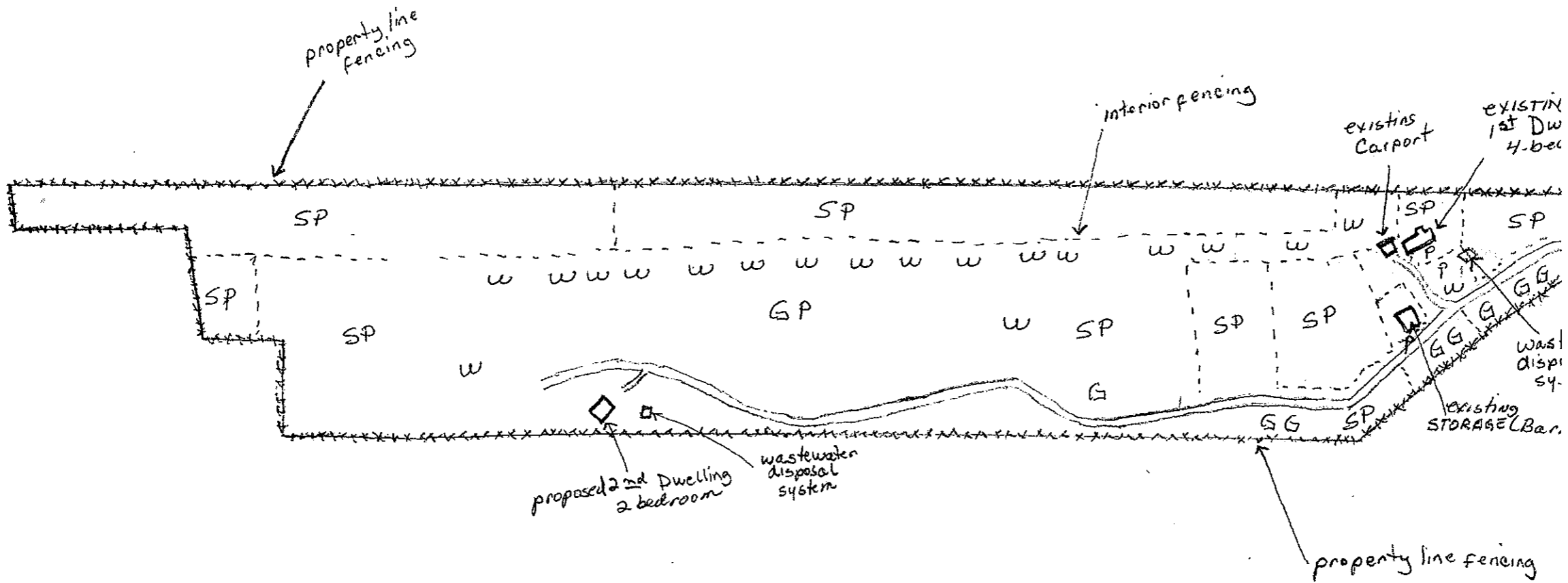
Enclosures: AFDA document
AFDA document instruction sheet

Mr. and Mrs. Glenn Oshiro
Page 6
April 30, 2008

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

N
Scale - 1" = 200'

SP = sheep pasture
 GP = proposed goat pasture
 w = waiawi bushes
 G = guava trees
 P = pohu bushes



TMR - (3)-4-6-10-014
 Glenn S + Kathleen E. Oshiro

THE DEPARTMENT OF THE DOCUMENT
RECORDS AS FOLLOWS
HONOLULU, HAWAII

BUREAU OF CONVEYANCES

Doc 2011-127188
AUG 10, 2011 03:29 PM

REGULAR SYSTEM: _____

LAND COURT SYSTEM: _____

AFTER RECORDATION, RETURN BY MAIL TO:

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

TITLE OF DOCUMENT:

**DECLARATION OF VARIANCE and
CANCELLATION OF AGREEMENT
VAR-11-000003; FDA-08-000207**

PARTIES TO DOCUMENT:

FIRST PARTY (AGENCY):

**PLANNING DIRECTOR
PLANNING DEPARTMENT,
COUNTY OF HAWAI'I**

SECOND PARTY (DECLARANTS):

**GLENN S. OSHIRO and
KATHLEEN E. OSHIRO
43-6315 Kahana Drive
Honoka'a, HI 96727**

PROPERTY DESCRIPTION:

Lot 101, Āhualoa Homesteads Honoka'a Section,
Being a Portion of Grant 8867, consisting of
approximately 28.66 acres, Hāmākua, Hawai'i

TMK No. (3) 4-6-010:014

DECLARATION OF VARIANCE– VAR-11-000003
And CANCELLATION OF AGREEMENT – FDA-08-000207

This Declaration is made this 24 day of June, 2011,

Whereas, **GLENN S. OSHIRO and KATHLEEN E. OSHIRO**, whose primary mailing address is 43-6315 Kahana Drive, Honoka‘a, Hawai‘i 96727, are the owners of real property bearing Tax Map Key (3) 4-6-010:014, more particularly described herein; and

Whereas, the owners desire to subdivide the above-described property or tax map keys (3) 4-6-010:014 parcel of land into four (4) lots; and

Whereas, the Planning Director for the County of Hawai‘i has, by letter dated May 31, 2011, agreed to grant variance from the water system improvement requirements applicable to a proposed four (4) lot subdivision (SUB-10-001003) of the above-referenced property; and

Whereas, the grant of Variance – VAR-11-000003 by the Planning Director is subject to the following Variance conditions:

2. WATER VARIANCE:

- a. The owners agree and accept the fact that a County dedicable public water system is not now able to service the proposed subdivision SUB-10-001003. Should the Council adopt a Unified Impact Fees Ordinance setting forth criteria for the imposition of exactions or the assessment of impact fees, conditions included herein shall be credited towards the requirements of the Unified Impact Fees Ordinance.
- b. No further subdivision of the lots created by SUB-10-001003 will be permitted unless county water system requirements and other requirements of Chapter 23, Subdivisions, are met.
- c. No condominium property regime (CPR) shall be permitted on any lots created by SUB-10-001003.
- d. Any dwelling constructed on a proposed lot not serviced by a County water system shall be provided with and maintain a private potable rain catchment system which includes a minimum 6000-gallon water storage capacity for

domestic consumption or potable uses. This private water catchment system shall 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.

- e. Each permitted dwelling shall be provided with and maintain a private water supply system which includes an additional minimum 3,000-gallon water storage capacity for firefighting and emergency purposes. The location and capacity of the emergency water supply system, including the necessary compatible connector system, shall meet with the approval of the Hawai'i County Fire Department. The Hawai'i County Fire Department also advises as a precautionary measure for other uninhabited agricultural structures that consideration be given to the provision of a similar water storage system for firefighting and emergency purposes.
- f. In the event that there are any amendments or changes to the subdivision after the agreement is signed, the applicant shall be responsible for informing the County Planning Department of such amendments or changes so that the agreement can be amended concomitantly. Further, the written or recorded agreement shall be binding upon the owner(s), their successors or assigns and shall be incorporated as an exhibit and made part of each agreement of sale, deed, lease, or similar documents affecting the title or ownership of the existing property or approved subdivided lots.
- g. In the event that the County notifies the owner(s) of any lot created by SUB-10-001003 that the County Water System has been upgraded, or an improvement district initiated to enable service to those lots, they lot(s) shall participate in such improvement district or shall pay their pro-rata share of the upgrade and installation of laterals, as determined by the Department of Water Supply.
- h. The subdivider and all grantees, successors, and assigns acknowledge that the parcel was created by a variance from the normal subdivision requirements of Hawai'i County, and that there are no special or unusual circumstances.

applying to the property which deprive the owner of substantial property rights or to a degree which obviously interferes with the best use or manner of development of the property, and hence, no grounds exist or will exist for a variance from the subdivision code to permit further subdivision of the property, and that changes in the owner's personal or financial situation after acquiring the property also will not constitute grounds for a variance from the subdivision code to permit further subdivision of the property.

3. ROAD VARIANCE

- a. The applicant and/or owner(s) shall indemnify and defend the State of Hawai'i or County of Hawai'i from any and all liability arising out of vehicular access to and from the subject property utilizing this existing private utility and access easement.
- b. Upon written demand of the County of Hawai'i, the applicant and /or owners, their assigns, or successors shall agree to participate and pay their fair share percentage of any improvement district adopted for the purpose of roadway improvements serving the proposed lot(s) arising out of SUB-10-001003. Should the improvement district require acquisition of any privately-owned rights-of-way fronting the lots arising out of SUB-10-001003, such rights-of-way shall be dedicated to the County without cost and the value of the dedication credited to the fair share contribution of the respective lot owner(s). Should the Council adopt a Unified Impact Fees Ordinance setting forth criteria for the imposition of exactions or the assessment of impact fees, conditions included herein shall be credited towards the requirements of the Unified Impact Fees Ordinance.
- c. The future lot owner(s) agree to participate in any road maintenance agreement or/and pay their fair share to maintain the roadway. In the event that there are any amendments or changes to the subdivision after the agreement is signed, the applicant shall be responsible for informing the County Planning Department of such amendments or changes so that the agreement can be amended concomitantly. Further, the written or recorded agreement shall be

binding upon the owner(s), their successors or assigns and shall be incorporated as an exhibit and made part of each agreement of sale, deed, lease, or similar documents affecting the title or ownership of the existing property or approved subdivided lots.

FURTHER WITNESSETH

WHEREAS, on April 28, 2008 an agreement was entered into by and between the First Party and the Second Party whereby the Second Party was authorized to construct a farm dwelling (being the second dwelling) on the property described as Tax Map Key (3) 4-6-010:014; and

WHEREAS, the subject area is zoned Agricultural (A-5a) by the County of Hawai'i and classified Agricultural and by the State Land Use Commission; and

WHEREAS, the agreement to construct said improvements was duly recorded with the State of Hawai'i Bureau of Conveyances as Document Number 2008-094573; and

WHEREAS, the property described as Tax Map Key (3) 4-6-010:014 is being subdivided leaving only one dwelling on any resultant lot; and

WHEREAS, the First Party and the Second Party agree that execution of said agreement should be cancelled as there is no longer any valid, compelling reason for it because the subdivision will result in only one dwelling being located on the property described herein and its resultant lots.

NOW, THEREFORE, in consideration of the above recitals and the conditions and covenants contained therein, the parties agree as follows:

The First Party agrees that the agreement dated April 28, 2008, recorded at the State of Hawai'i Bureau of Conveyances Document Number 2008-094573, between the First Party and the Second Party is no longer applicable and that the agreement is hereby declared null and void.

The First Party agrees that the agreement dated April 28, 2008 no longer constitutes a covenant or encumbrance running with the land as it relates to Tax Map Key (3) 4-6-010:014 and its resultant lots.

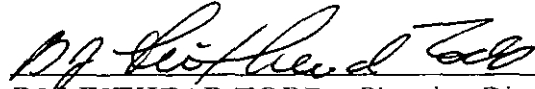
The Second Party agrees to pay for all of the necessary costs and expenditures to record this Cancellation of Agreement.

IT IS MUTUALLY AGREED BY AND BETWEEN the parties that if any additional documents are necessary that they will execute same in order that the agreement dated April 28, 2008 no longer constitutes an encumbrance on Tax Map Key (3) 4-6-010:014 nor its resultant lots.

IN CONSIDERATION OF THE AFORESAID, the Department hereby approves this Declaration and Cancellation as being in conformity with the Hawai'i County Code.

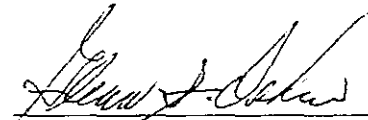
IN WITNESS WHEREOF, the parties have executed this agreement and agree to such provision which shall run with the land.

FIRST PARTY (AGENCY):

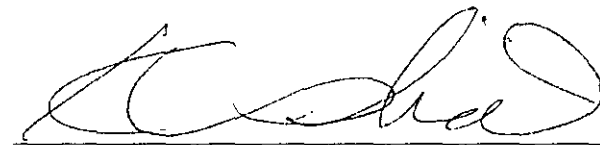


BJ LEITHEAD TODD – Planning Director
County of Hawai‘i Planning Department

SECOND PARTY (DECLARANTS):



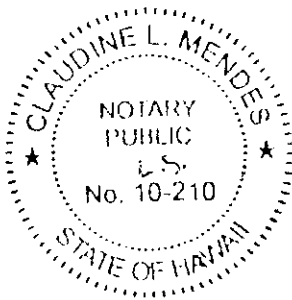
GLENN S. OSHIRO
OWNER



KATHLEEN E. OSHIRO
OWNER

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

On this 24th day of June, 2011 before me personally appeared **GLENN S. OSHIRO and KATHLEEN E. OSHIRO**, 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.



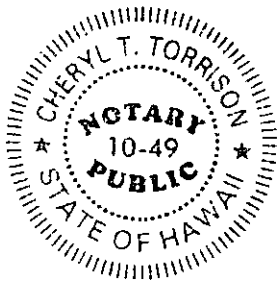
Name *Claudine L. Mendes*


Notary Public, State of Hawaii

My commission expires: 7/18/2014


STATE OF HAWAII)
) SS.
COUNTY OF HAWAII)

On August 2, 2011 before me personally appeared BJ Leithead Todd to me personally known, who, being by me duly sworn, did say that she is the Planning Director of the County of Hawai'i, 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 BJ Leithead Todd acknowledged the instrument to be the free act and deed of said Planning Department, County of Hawaii.





CHERYL T. TORRISON
Notary Public, Third Circuit, State of Hawai'i
My Commission Expires: 03-07-2014

Doc. Date: <u>June 24, 2011</u>	# Pages: <u>9</u>
Notary Name: Cheryl T. Torrison	Third Circuit
Doc. Description: <u>Declaration of Variance VAR-11-000003 & Cancellation Agreement FDA-08-000207</u>	
<u>Glenn S Oshiro & Kathleen E Oshiro TMK 4-6-010:014 SUB-10-001003</u>	
 Notary Signature	<u>8/2/2011</u> Date

