

BEFORE THE LAND USE COMMISSION
OF THE STATE OF HAWAII

In the Matter of the Petition of)
JOHN GODFREY)
For a Declaratory Order to)
Determine Whether a Dwelling)
Situated on Land Located in the)
State Agricultural Land Use)
District Must be a "Farm Dwelling")
and that the Ohana Dwelling Law)
Does Not Eliminate That "Farm)
Dwelling" Requirement)

DOCKET NO. DR94-17
DECLARATORY ORDER

This is to certify that this is a true and correct copy of the Decision and Order on file in the office of the State Land Use Commission, Honolulu Hawaii.

DEC 06 1994 by *Esther Leide*
Date Executive Officer

DECLARATORY ORDER

DEC 6 11 37 AM '94
LAND USE COMMISSION
STATE OF HAWAII

BEFORE THE LAND USE COMMISSION
OF THE STATE OF HAWAII

In the Matter of the Petition of) DOCKET NO. DR94-17
JOHN GODFREY) DECLARATORY ORDER
For a Declaratory Order to)
Determine Whether a Dwelling)
Situated on Land Located in the)
State Agricultural Land Use)
District Must be a "Farm Dwelling")
and that the Ohana Dwelling Law)
Does Not Eliminate That "Farm)
Dwelling" Requirement)

DECLARATORY ORDER

PETITIONER'S INTEREST

John Godfrey ("Petitioner"), a resident of Kaloko, North Kona, County and State of Hawaii, filed a Petition for Declaratory Ruling pursuant to section 91-8, Hawaii Revised Statutes ("HRS"), and section 15-15-98, Hawaii Administrative Rules ("HAR"). Petitioner is the owner of land adjoining the property known as the Crazy Horse subdivision ("Crazy Horse") situated in Kaloko, North Kona, County of Hawaii, State of Hawaii, and specifically identified as Hawaii Tax Map Key: 7-3-08: 67, 113, 114, 115, 116, 117, 118, 119, 120, and 121 ("Property"). The Property is within the State Land Use Agricultural District.

Crazy Horse is comprised of ten one-acre lots. In 1986, the County Council of the County of Hawaii rezoned the Property consisting of 10.469 acres of land from Ag-3a to Ag-1a pursuant to Ordinance No. 86-98. In 1990, the County of Hawaii Planning Department ("Planning Department") approved the

subdivision of the Property into ten one-acre lots. In 1992, the Planning Department issued ohana dwelling permits for the construction of two single-family dwellings on each of the one-acre lots. In 1993, the landowner of the Property, World Square, commenced the construction of two single-family dwellings on each of the one-acre lots. To date, all single-family dwellings have been constructed.

Petitioner filed the instant Petition for Declaratory Ruling "for a declaratory ruling that a dwelling situated on land located in the State Agricultural Land Use District must be a 'farm dwelling' and, further, that the ohana dwelling law does not eliminate that 'farm dwelling' requirement."

FINDINGS OF FACT

PROCEDURAL MATTERS

1. On January 7, 1994, Petitioner filed its Petition for Declaratory Ruling, Supporting Exhibits, and Memorandum ("Petition for Declaratory Ruling").

2. On February 22, 1994, the Planning Department filed a Motion for Disqualification of Counsel, Memorandum in Support of Motion, and Exhibits "A" and "B."

3. On February 24, 1994, Michael J. Matsukawa, Esq. ("Petitioner's Counsel") filed a Request for Continuance and the Affidavit of Michael J. Matsukawa in Response to the Motion for Disqualification of Counsel ("Request for Continuance").

4. On February 24, 1994, at its meeting in Lihue, Kauai, the Land Use Commission ("Commission") took action to consider the Petition for Declaratory Ruling. At this meeting,

the Commission heard arguments from the Petitioner, the Planning Department, and the Office of State Planning ("OSP") in regards to Petitioner's Request for Continuance.

5. Hearing no objections from the Petitioner, Planning Department, and OSP, and with good cause shown, the Land Use Commission ("Commission"), pursuant to section 15-15-34, HAR, waived the 60-day requirement provided in section 15-15-100, HAR, granted Petitioner's Request for Continuance, and continued the action to consider the Petition for Declaratory Ruling. The Order Granting Request For Continuance was subsequently issued on March 4, 1994.

6. On April 21, 1994, the Commission received from Petitioner's Counsel a copy of an opinion from the Office of Disciplinary Counsel, Supreme Court, State of Hawaii. The Office of Disciplinary Counsel opined that Petitioner's Counsel is not in violation of ethical rules because he did not have substantial involvement in the permits issued by the Planning Department.

7. On April 21, 1994, at its meeting in Hilo, Hawaii, the Commission held a continued action meeting on the Petition for Declaratory Ruling. Arguments were heard from the Petitioner, Planning Department, and the OSP. After due deliberation, the Commission set the Petition for Declaratory Ruling for hearing. The Order Setting Petition For Declaratory Ruling For Hearing was issued on May 23, 1994.

8. On July 18, 1994, the OSP filed a Petition for Intervention pursuant to section 15-15-53, HAR.

9. On July 19, 1994, the Planning Department filed a Petition for Intervention pursuant to section 15-15-53, HAR.

10. On July 28, 1994, at its meeting in Honolulu, Oahu, the Commission held an action meeting to consider the Petitions for Intervention filed by the OSP and Planning Department. With no objections from the Petitioner, and with good cause shown, the OSP and Planning Department were granted intervenor status in the proceedings on the Petition for Declaratory Ruling. The Orders Granting Petition For Intervention of the Planning Department and the OSP were issued on August 3, 1994.

11. On August 2, 1994, a prehearing conference was held at Honolulu, Oahu with representatives of the Petitioner, Planning Department, and the OSP present.

12. On August 23, 1994, at its meeting in Kailua-Kona, Hawaii, the Commission held a hearing on the Petition for Declaratory Ruling. Appearing before the Commission were the following:

Petitioner:

John Godfrey
Michael J. Matsukawa, Esq.

Planning Department:

Virginia Goldstein, Director
Richard D. Wurdeman, Esq., Corporation
Counsel

OSP:

Abe Mitsuda
Robyn Loudermilk
Rick J. Eichor, Esq., Deputy Attorney
General

13. The landowner of the Property, Ronald Brown, was sent notice of the hearing but did not appear before the Commission.

14. The following individuals appeared as public witnesses and/or provided testimony:

Joseph Nakea
Ruth Glatt
Stephen Martin
Lawrence McKee
Jim Schleiger
Fanny Auhoy
Roger Meeker
John Broussard
William Lazenby
Hank Kekai
Mariam Wilkins
Shannon Rudolph
Jim Rosenfeld
David Tarnas
Mel Chamberlain
Teri Leicher
Janet Butler

POSITION OF THE PARTIES

15. Petitioner contends that Crazy Horse, with its ohana dwellings, is an illegal use on State Land Use Agricultural District lands as the residences appear to be single-family dwellings and not "farm dwellings" as defined in HRS §205-4.5. Furthermore, Petitioner argues that the dwellings are not tied to an agricultural activity that is required under HRS §205-2.

16. Petitioner acknowledges that the County of Hawaii may further define accessory agricultural uses and services described in HRS §§205-2 and 205-4.5 and may provide for ohana zoning pursuant to HRS §46-4(c). However, Petitioner argues that the "farm dwelling" requirement on State Land Use Agricultural District lands pursuant to HRS §205-4.5 is not eliminated by HRS

§46-4(c). Petitioner further argues that the County of Hawaii does not have the statutory authority or power to enact, maintain, or apply a county ordinance if the ordinance conflicts with a State statute.

17. The OSP contends that the ohana dwelling law does not eliminate the farm dwelling requirement of the State land use law and therefore any dwelling situated on land located in the State Land Use Agricultural District must be a farm dwelling as that term is defined in HRS §205-4.5(a)(4) and in prior declaratory rulings of this Commission (LUC Docket No. DR83-8) to the extent said rulings have not been nullified by legislative action.

18. The Planning Department agrees with a County of Hawaii Corporation Counsel opinion (Opinion 94-1) that opines that under existing State law, ohana dwellings are permissible on lands classified as agricultural as long as they meet the definition of "farm dwellings."

PROPERTY DESCRIPTION

19. The Property in question is identified as Hawaii Tax Map Key No.: 7-3-08: 67, 113, 114, 115, 116, 117, 118, 119, 120, 121.

20. The Property is located within the State Land Use Agricultural District as represented in the State Land Use District Boundaries Map H-7 (Kailua).

21. The Property is situated in Kaloko, North Kona, County and State of Hawaii. Specifically, it is located approximately 0.25 miles from Palani Junction (convergence of

Palani Road and Mamalahoa Highway) and is situated at the end of Onaona Drive (mauka of Mamalahoa Highway).

22. The northern portion of the Property is considered as Other Important Agricultural Lands by the Agricultural Lands of Importance to the State of Hawaii (ALISH) Classification System. The southern portion of the Property is not rated by ALISH.

23. The Land Study Bureau's Detailed Classification rates the area in which the Property is situated as class "C" (fair productivity) lands.

PROPOSED USE OF PROPERTY

24. On August 25, 1986, the Hawaii County Council approved Ordinance No. 86-98 which allowed rezoning of the an approximately 10.496 acre parcel from Agricultural 3-acres (A-3a) to Agricultural 1-acre (A-1a) pursuant to a Change of Zone Request by the owner of the Property at that time, Stephen D. Zuckerman.

25. According to a background report submitted with the Change of Zone Request, the proposed rezoning was needed to allow use of the 10.496 acre parcel as rural house lots similar to the Northridge Subdivision situated immediately makai (west) of the Property.

26. The background report represented that rezoning would provide an opportunity for greater agricultural activity in the area, although the activity would be of a small-scale or backyard variety such as orchid raising or greenhouses.

27. In 1986, World Square, through its principle Ronald Brown, obtained the 10.496 acre parcel from Stephen D. Zuckerman.

28. On February 27, 1990, the Planning Department granted a revised tentative subdivision approval of the approximately 10.496 acre parcel.

29. On October 31, 1990, the Department of Commerce and Consumer Affairs, State of Hawaii filed an involuntary cancellation of World Square, a Hawaii limited partnership.

30. On March 10, 1992, the Planning Department granted final subdivision approval for the 10.496 acre parcel. The Property was subdivided into ten approximately 1-acre lots with a common road easement.

31. On June 24, 1992, the Planning Department granted approval for an ohana dwelling permit for TMK: 7-3-08: 67.

32. On November 2, 1992, the Planning Department granted approvals for ohana dwelling permits for TMKs: 7-3-08: 113, 114, 115, 116, 117, 118, 119, 120, 121.

33. On May 17, 1993, Ronald Brown filed a building permit application for TMK: 7-3-08: 67. Subsequently, on May 27, 1993, the Building Division, County of Hawaii Department of Public Works approved the building permit application and issued Building Permit No. 935538.

34. On May 28, 1993, Ronald Brown filed building permit applications for TMKs: 7-3-08: 113, 114, 115, 116, 117, 118, 119, 120, and 121. Subsequently, on June 16, 1993, the Building Division, County of Hawaii Department of Public Works

approved the building permit applications and issued Building Permit Nos. 935584, 935586, 935588, 935590, 935592, 935595, 935597, 935599, and 935601.

35. In 1993, World Square began construction of two dwelling units on each of the 1-acre lots within the Property.

36. To date, twenty dwelling units have been constructed within the Property.

37. Each of the dwelling units are three-stories in height and consists of four bedrooms, six baths, five dressing room areas, two enclosed lanais, a kitchen area, a dining room, a living room, and a housekeeper room.

38. An article published in West Hawaii Today on October 1, 1993 ("Article") written by Ron Brown, the landowner of the Property, states that the dwelling units were an alternative to sharing a typical three bedroom/two bath home with several others and that individuals wishing to live privately on a budget are the intended occupants.

39. In response to a subpoena issued by the Commission on August 5, 1994 to Village Realty ("Subpoena-VR"), Village Realty provided a print advertisement caused by Village Realty to be published which states that one bedroom/one bath units with ocean view and cool elevations were available for rental at \$350.00/month. This print advertisement also stated that the offer is limited to available apartments and limited to one person per apartment.

40. In response to the Subpoena-VR, Village Realty also provided two print advertisements caused by Village Realty

to be published on August 7, 1994 in the West Hawaii Today which stated that brand new, private, one bedroom/one bath oceanview apartments were available for \$350.00/month. These advertisements appeared in the classified section under "Rooms for Rent" and "Apts. for Rent."

41. In response to the Subpoena-VR, Village Realty also provided an audio advertisement caused by Village Realty to be broadcast which states that brand new one bedroom private apartments were now renting for \$350.00/month for one person at "Crazy Horse Ranch." The audio advertisement also informs people that a video of "Crazy Horse Ranch" may be seen on television or at the Village Realty offices.

42. In response to a Subpoena issued by the Commission on August 5, 1994 to Ackerman and Black Productions/Channel 6 ("Subpoena-ABP") Ackerman and Black Productions/Channel 6 provided a video tape advertisement caused by Village Realty to be broadcast which states that private apartments at "Crazy Horse Ranch" are available for \$350.00/month. The advertisement also states that the 1 bedroom apartments have full baths and are washer and dryer ready.

43. The advertisements caused to be published or broadcasted do not indicate that the individual rooms within the dwellings being promoted or marketed as single individual rental units must be connected to any agricultural related use.

PERMIT APPROVALS

44. The building permit applications submitted by Ronald Brown were approved by an official of the Planning Department of the County of Hawaii, among other County agencies.

45. The current policy of the Planning Department is not to review the proposed use at the time of permit approval but rather at the time that the proposed use actually occurs.

46. In regards to violations within the State land use Agricultural District, the current County procedure for enforcing the provisions of HRS §205-12 is through County zoning violations which would be reviewed by the County Council and may be further prosecuted through the courts.

47. The Commission may not be notified of a violation within the State land use Agricultural District until the County has performed an initial investigation, has concluded that a violation exists, and has notified the landowner of the violation.

RULING ON PROPOSED FINDINGS OF FACT

Any of the proposed findings of fact submitted by Petitioner or other parties not already ruled upon by the Commission by adoption herein, or rejected by clearly contrary findings of fact herein, are hereby denied and rejected.

Any conclusions of law herein improperly designated as a finding of fact should be deemed or construed as a conclusion of law; any finding of fact herein improperly designated as a conclusion of law should be deemed or construed as a finding of fact.

CONCLUSIONS OF LAW

JURISDICTION

1. Jurisdiction of the Commission to consider the request of Petitioner is authorized under HRS §91-8, and §15-15-98, HAR.

2. HRS §91-8 also authorizes the Commission to issue declaratory rulings "as to the applicability of any statutory provision or of any rule or order of the agency."

REMEDY

1. Petitioner is requesting that the Commission issue an Order rendering that the use as declared and intended on the Property is in violation of HRS §§205-2 and 205-4.5, and have the County, pursuant to HRS §205-12 enforce the State land use law.

APPLICABLE LEGAL AUTHORITIES

1. The Hawaii Revised Statutes ("HRS") describes uses authorized in State agricultural land use districts:

- a) HRS §205-2(d) provides the permissible uses within an agricultural use district and on lands not rated as class A or B lands by stating:

Agricultural districts shall include activities or uses as characterized by the cultivation of crops, orchards, forage, and forestry; farming activities or uses related to animal husbandry, aquaculture, and game and fish propagation; aquaculture, which means the production of aquatic plants and animal life for food and fiber within ponds and other bodies of water; wind generated energy production for public, private, and commercial use; bona fide agricultural services and uses which support the agricultural activities of the fee or leasehold owner of the property and accessory to any of the above activities, whether or not conducted on the same premises as the agricultural activities to which they are

accessory, including but not limited to farm dwellings as defined in section 205-4.5(a)(4), employee housing, farm buildings, mills, storage facilities, processing facilities, vehicle and equipment storage areas, and roadside stands for the sale of products grown on the premises; wind machines and wind farms; small-scale meteorological, air quality, noise, and other scientific and environmental data collection and monitoring facilities occupying less than one-half acre of land, provided that such facilities shall not be used as or equipped for use as living quarters or dwellings; agricultural parks; and open area recreational facilities, including golf courses and golf driving ranges; provided that they are not located within agricultural district lands with soil classified by the land study bureau's detailed land classification as overall (master) productivity rating class A or B.

These districts may include areas which are not used for, or which are not suited to, agricultural and ancillary activities by reason of topography, soils, and other related characteristics. (Emphasis added.)

- b) HRS §205-4.5(a)(4) provides that "farm dwellings" are permissible uses for agricultural land rated as class A or B lands by stating:

Farm dwellings, employee housing, farm buildings, or activity or uses related to farming and animal husbandry;

Farm dwelling as used in this paragraph 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);

- c) HRS §205-5(b) authorizes the counties to further define permissible uses within an agricultural land use district by zoning ordinance and special permits by stating:

Within agricultural districts, uses compatible to the activities described in section 205-2 as determined by the commission shall be permitted; provided that accessory agricultural uses and services described in sections 205-2 and 205-4.5 may be further defined by each county by zoning ordinance. Other uses may be allowed by special permits issued pursuant to this chapter. The minimum lot size in agricultural districts shall be determined by each county by zoning ordinance, subdivision ordinance, or other lawful means; provided that the minimum lot size for any agricultural use shall not be less than one acre, except as provided herein. If the county finds that unreasonable economic hardship to the owner or lessee of land cannot otherwise be prevented or where land utilization is improved, the county may allow lot sizes of less than the minimum lot size as specified by law for lots created by a consolidation of existing lots within an agricultural district and the resubdivision thereof; provided that the consolidation and resubdivision do not result in an increase in the number of lots over the number existing prior to consolidation; and provided further that in no event shall a lot, which is equal to or exceeds the minimum lot size of one acre be less than that minimum after the consolidation and resubdivision action. The county may also allow lot sizes of less than the minimum lot size as specified by law for lots created or used for public, private, and quasi-public utility purposes, and for lots resulting from the subdivision of abandoned roadways and railroad easements. (Emphasis added.)

- d) HRS §46-4(c), as amended in 1989, authorizes the counties to allow ohana zoning by stating:

Each county may adopt reasonable standards to allow the construction of two single-family dwelling units on any lot where a residential dwelling unit is permitted. (Emphasis added.)

Consequently, it is clear that HRS §46-4(c) allows Ohana zoning only on land "where a residential

dwelling [vis-a-vis "farm dwelling"] unit is permitted."

2. The Commission adopted section 15-15-25, Hawaii Administrative Rules, which describes the permissible uses within the "A" agricultural district by stating:

(a) Permissible uses within agricultural district land classified by the land study bureau's detailed land classification as overall (master) productivity rating class A or B shall be those uses set forth in section 205-4.5, HRS.

(b) Permissible uses within the agricultural district land classified by the land study bureau's detailed land classification as overall (master) productivity rating class of C, D, E and U shall be those uses permitted in A and B lands as set forth in section 205-4.5, HRS, and also those uses set forth in section 205-2, HRS.

3. The County of Hawaii enacted ordinance in its Hawaii County Code ("H.C.C.") that further defines permissible uses within the State agricultural land use district.

a) H.C.C. §25-152(a) describes the following permissible uses authorized within the County agricultural zoning district:

The permitted uses in A districts shall be as follows:

- (1) One single family dwelling per building site.
- (2) All forms of agriculture; the growing and gathering of crops, fruits, vegetables, flowers, trees, and other plants the raising and keeping of animals and fowls except as limited in paragraph (9) of this section; the physical processing, storage and sale of the products produced on the premises, subject to the limitation in paragraph (14) of this section.
- (3) Country clubs, parks, playgrounds, tennis courts, and other similar recreational areas that are essentially open lands and where none of the recreational features are entirely enclosed in a building.
- (4) Private clubs or lodges, hunting or fishing lodges, and fraternal and social orders.

- (5) Trailer parks with density of three thousand five hundred square feet of land area per trailer and with plan approval of the director.
- (6) Home occupations.
- (7) Dormitories and additional single family dwellings for persons employed on the premises when found to be necessary to the conduct of an agricultural use by the director.
- (8) Public dumps.
- (9) Piggeries, apiaries, and pen feeding of livestock when not closer than thousand feet to any major public road or to any district other than a U district on sites approved by the department of health and the director.
- (10) Airfields, heliports, and private landing strips.
- (11) Commercial fertilizer yard utilizing only manure and soil.
- (12) The killing, slaughtering or dressing for market of animals produced on the premises.
- (13) Fish and poultry hatcheries, including aquaculture activity.
- (14) Processing, storage, packing, shipping and sale of products produced on the premises provided the site or building used for such activity shall be at least one hundred feet from any property line.
- (15) Riding academies, rental or boarding stables, dog kennels and catteries.
- (16) Animal hospitals.
- (17) Commercial excavation or removal of natural building materials or minerals.
- (18) Guest ranches.
- (19) Hunting and fishing lodges and preserves.
- (20) Use and buildings normally considered accessory to the above permitted uses subject to approval of the director. (Emphasis added.)

- b) H.C.C. §25-271 was enacted in 1982 and has not been amended since the State Legislature amended HRS §46-4(c) in 1989 to authorize the County to "adopt reasonable standards to allow the construction of two single-family dwelling units on any lot where a residential dwelling units is permitted." H.C.C. §25-271 states:

Notwithstanding any law, ordinance, or rule to the contrary, two dwelling units may be constructed on any lot within all state land use urban,

agricultural, rural and conservation districts provided that:

- (1) Applicable County requirements, not inconsistent with the intent of this section and the zoning provisions applicable to residential use are met, including use, building height setback, and off street parking;
- (2) The County determines that public facilities as specified in section 25-272 of this article are adequate to serve the ohana dwelling unit;
- (3) That at the time of application for a county building permit for a second dwelling unit, the subject lot or land parcel is not restricted by a recorded covenant or a recorded lease provision (in a lease having a term of not less than fifteen years) which prohibits a second dwelling unit; and
- (4) Appropriate state approval has been received if the lot is situated within the State Land Use Conservation district.

4. On February 9, 1994 the Office of the Corporation Counsel for the County of Hawaii issued Opinion 94-1. The opinion was written by the Corporation Counsel, Richard D. Wurdeman, to the Hawaii County Council, and stated in relevant part:

"We do, however, agree that under existing law, both State and County, "Ohana" dwellings are permissible on land classified as agricultural, so long as they meet the definition of farm dwellings. Although this requirement is not explicit in the County Ordinance, that ordinance must be construed with reference to the State statute [H.R.S. §205-4.5(a)(4)], or in pari materia. HRS §1-16.

To summarize, multiple dwellings are permissible on agricultural lands, if they are farm dwellings used in connection with income producing activity."

5. Chapter 205, Hawaii Revised Statutes, does not authorize residential dwellings as a permissible use within an agricultural use district, unless the dwelling is related to an agricultural activity or is a "farm dwelling." Any county

ordinance, rule, or law that authorizes any residential dwelling as a permissible use within an agricultural use district is preempted by State law, unless the dwelling is related to an agricultural activity or is a "farm dwelling." See, House Journal, State of Hawaii, 1976, page 533; Standing Committee Report 662-76, Senate Journal, State of Hawaii, 1976 page 1177 and 1496; Conference Committee Report No. 2-76, Senate Journal, State of Hawaii, 1976, page 836; Conference Committee Report No. 6, House Journal, State of Hawaii, 1976, page 1095.

6. HRS §46-4(c), as amended in 1989, authorizes the counties to permit ohana zoning only "on any lot where a residential dwelling unit is permitted." A residential dwelling is not permitted on land within a State agricultural land use district, unless the residential dwelling is related to an agricultural activity or is a "farm dwelling." Any county ordinance, rule, or law that authorizes ohana zoning on land within the State agricultural land use district and the construction of two single-family dwelling units is preempted by State law, unless the two single-family dwelling units are related to an agricultural activity or is a "farm dwelling."

7. Pursuant to their enforcement duties under HRS §205-12, the counties must take measures to ensure that any subdivision in an agricultural district will be used for agricultural purposes. The Planning Department has represented to the Commission that it will enforce the agricultural use upon Ronald Brown after performing an investigation and determining his actual use of the Property. To the extent that the authority

to enforce the restrictions on use in State agricultural use districts has been delegated to the Planning Department pursuant to HRS §205-12, the Commission will allow the Planning Department to conduct its investigation to determine whether Ronald Brown actually intends to use the structures constructed on the Property in a manner that is related to an agricultural activity.

8. The Commission notes that although Ronald Brown was provided notice of this proceeding and chose not to participate, any determination in this proceeding that may aggrieve Ronald Brown may require his participation.

DECLARATORY ORDER

FOR GOOD CAUSE APPEARING, the Commission hereby rules that a dwelling situated on land located in the State Agricultural Land Use District must be a "farm dwelling" or related to an agricultural activity. The ohana dwelling law under HRS §46-4(c), as amended in 1989, does not eliminate the requirement that the two single-family dwelling units must be a "farm dwelling" or related to an agricultural activity.

DOCKET NO. DR94-17 - JOHN GODFREY

Done at Honolulu, Hawaii, this 6th day of December 1994,
per motion on December 1, 1994.

LAND USE COMMISSION
STATE OF HAWAII

By Allen K. Hoe
ALLEN K. HOE
Chairperson and Commissioner

By Allen Y. Kajioka
ALLEN Y. KAJIOKA
Vice Chairperson and Commissioner

By (absent)
EUSEBIO LAPENIA, JR.
Vice Chairperson and Commissioner

By M. Casey Jarman
M. CASEY JARMAN
Commissioner

By Lloyd F. Kawakami
LLOYD F. KAWAKAMI
Commissioner

By Joann N. Mattson
JOANN N. MATTSON
Commissioner

By (absent)
RENTON L. K. NIP
Commissioner

By Trudy K. Senda
TRUDY K. SENDA
Commissioner

Filed and effective on
December 6, 1994

Certified by:

Elton Wada
Executive Officer

By Elton Wada
ELTON WADA
Commissioner

BEFORE THE LAND USE COMMISSION
OF THE STATE OF HAWAII

In the Matter of the Petition of)	DOCKET NO. DR94-17
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JOHN GODFREY)	CERTIFICATE OF SERVICE
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For a Declaratory Order to)	
Determine Whether a Dwelling)	
Situated on Land Located in the)	
State Agricultural Land Use)	
District Must be a "Farm Dwelling")	
and that the Ohana Dwelling Law)	
Does Not Eliminate That "Farm)	
Dwelling" Requirement)	
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CERTIFICATE OF SERVICE

I hereby certify that a copy of the Declaratory Order was served upon the following by either hand delivery or depositing the same in the U. S. Postal Service by certified mail:

NORMA WONG, Director
Office of State Planning
P. O. Box 3540
Honolulu, Hawaii 96811-3540

CERT. VIRGINIA GOLDSTEIN, Planning Director
Planning Department, County of Hawaii
25 Aupuni Street
Hilo, Hawaii 96720

CERT. RICHARD D. WURDEMAN, ESQ., Attorney for County
Corporation Counsel, County of Hawaii
The Hilo Lagoon Centre
101 Aupuni Street, Suite 325
Hilo, Hawaii 96720

CERT. MICHAEL J. MATSUKAWA, Attorney for Petitioner
75-167E Hualalai Road, No. 2
Kailua-Kona, Hawaii 96740

CERT. JOHN GODFREY
P. O. Box 1922
Kailua-Kona, Hawaii 96745

CERT. RONALD A. BROWN
 c/o World Square
 P. O. Box 2940
 Kailua-Kona, Hawaii 96745

DATED: Honolulu, Hawaii, this 6th day of December 1994.



ESTHER UEDA
Executive Officer