



United States  
Department of  
Agriculture

Farm  
Service  
Agency

Maui County FSA Office  
210 Imi Kala Street, Suite 207  
Wailuku, Hawaii 96793  
Phone (808) 244-3100 Ext. 2

February 21, 2007

Calvin Mobbs  
Coldwell Banker Island Properties, Inc.  
10 Hoohui Rd. #109  
Lahaina, HI 96761

Dear Mr. Mobbs,

Enclosed is a press release regarding the Agricultural Foreign Investment Disclosure Act (AFIDA) of 1978. The Act requires that all foreign persons or entities who acquire, transfer, or hold interests in U.S. agricultural land to report these holdings and transactions to the USDA, Farm Service Agency (FSA) within 90 days of such transaction. I am requesting your assistance in making the members of the Realtors Association of Maui and your clients aware of this requirement.

Please contact me if you have any questions.

Sincerely,

  
James Robello,  
County Executive Director

Enclosed: AFIDA Press Release

**Press Release**

February 21, 2007

To : Calvin Mobbs, President  
Realtors Association of Maui, Inc.

From : USDA, Maui County Farm Service Agency

Subject : Agricultural Foreign Investment Disclosure Act (AFIDA) of 1978

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**Notice to Foreign Investors and Landowners**

The Agricultural Foreign Investment Disclosure Act (AFIDA) of 1978 requires foreign persons or entities who acquire, transfer, or hold interests in U.S. agricultural land to report these holdings and transactions to the USDA, Farm Service Agency (FSA) within 90 days of such transaction. An AFIDA report on form FSA-153 must be filed when a foreign individual, organization, or government holds ten (10) percent or more interest in agricultural land. Foreign persons or entities must also report changes in land use from non-agricultural to agricultural, or vice versa, and changes in addresses. Failure to report or late reporting may result in penalties of up to 25% of the fair market value of the land. For further information on AFIDA please contact the USDA, Maui County FSA office at (808) 244- 3100 extension 2.

The U.S. Department of Agriculture (USDA) prohibits discrimination in all its programs and activities on the basis of race, color, national origin, sex, religion, age, disability, political beliefs, sexual orientation, and marital or family status. (Not all prohibited bases apply to all programs.) Persons with disabilities who require alternative means for communication of program information (Braille, large print, audiotape, etc.) should contact USDA's TARGET Center at (202) 720-2600 (voice and TDD). To file a complaint of discrimination write USDA, Director, Office of Civil Rights, Room 326-W, Whitten Building, 1400 Independence Avenue, SW, Washington, DC 20250-9410 or call (202) 720-5964 (voice or TDD). USDA is an equal opportunity provider and employer.

FSA-153 U.S. DEPARTMENT OF AGRICULTURE Farm Service Agency (05-24-01)

1 TYPE ACTIVITY (See Page 2) (Check one) A. Land Holding B. Land Acquisition C. Land Disposition D. Land Use Change To Agriculture E. Land Use Change To Non-Agriculture

AGRICULTURAL FOREIGN INVESTMENT DISCLOSURE ACT REPORT

NOTE: Read Instructions on Page 2 Before Filing in Any Data Below. If Additional Space is Needed, Use Page 2

Form with multiple sections: 2. Tract Location and Description, 3. Owner of Tract, 5. Type of Interest Held, 6. How was this Tract Acquired, 7. Value of Agricultural Land, 8. Date of Acquisition, 9. Current Land Use, 10. Intended Use, 11. Relationship of Owner to Producer, 12. The Producer on This Tract, 13. Certification, 14. Signature.

**NOTE:** The following statement is made in accordance with the Privacy Act of 1974 (5 USC 552a) and the Paperwork Reduction Act of 1995, as amended. The authority for requesting the following information is Pub. L. 95-460. The information will be used to determine the effects of foreign persons acquiring, transferring and holding agricultural land and the effects of such activity on family farms and rural communities. Furnishing the requested information is mandatory. Failure to comply or falsification of reporting is subject to civil penalty, not to exceed 25 percent of the fair market value of the interest held in the tract on the date of the assessment of such penalty.

According to the Paperwork Reduction Act of 1995, an agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a valid OMB control number. The valid OMB control number for this information collection is 0560-0097. The time required to complete this information collection is estimated to average 15 minutes per response, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information.

**RETURN THIS COMPLETED FORM TO YOUR COUNTY FSA OFFICE**

**DETERMINATION OF "FOREIGN PERSON" STATUS**

**DEFINITION:** "Person" means any individual, corporation, company, association, firm, partnership, society, joint stock company, trust, estate, or any other legal entity

You are a "foreign person" under the provisions of Pub. L. 95-460 and must complete the front side of this form (FSA-153) if your answer is "NO" to all the statements in Items 1, 2, and 3 below.		YES	NO
1. I AM a citizen of the United States.			
2. I AM a citizen of the Northern Mariana Islands or the Trust Territories of the Pacific Islands.			
3. I AM lawfully admitted to the United States for permanent residence, or paroled into the United States, under the Immigration and Nationality Act.			
You are a "foreign person" under the provisions of Pub. L. 95-460 and must complete the front side of this form (FSA-153) if your answer is "YES" to any of the statements in Items 4a, 4b, and 5 below.		YES	NO
4. I AM a "person" other than an individual or government, which is created or organized under the laws of:			
a. A foreign government of which has its principal place of business located outside the United States			
b. Any State of the United States, and in which significant interest or substantial control <sup>1/</sup> is held directly or indirectly by any foreign individual, government, or person.			
5. I AM a foreign government			

**GENERAL INSTRUCTIONS**

Complete this form for each tract of land. Report as a tract all acreages under the same ownership in each county or parish acquired or transferred on the same date. Land in different counties or parishes and land acquired or transferred on different dates must be reported as separate tracts.

Return the original to the County Farm Service Agency (FSA) Office where the tract of land is located. Retain a copy for your records. **DO NOT SEND THIS FORM DIRECTLY TO WASHINGTON, D.C. UNLESS GRANTED PERMISSION BY THE FSA IN WASHINGTON, D.C.**

After the original disclosure on FSA-153 on the tract(s) of land owned by the same person within a county or parish, each subsequent change of ownership or use must be reported by filing another FSA-153.

**ITEM INSTRUCTIONS AND REPORTING DATES**

**ITEM 1. ONLY ONE BOX MAY BE CHECKED**

If the tract of land to be listed under Item 2 on the front side of this document was:

- Owned on February 1, 1979, check **A Land Holding**  ) Reporting Date: This document is required to be completed and returned by August 1, 1979

If the tract of land to be listed under Item 2 on the front side of this document was, on or after February 2, 1979:

- Acquired, check **B. Land Acquisition**

- Disposed of, check **C. Land Disposition**

- Changed from non-agricultural to agricultural use, check **D Land Use Change to Agriculture**

- Changed from agricultural to non-agricultural, use check **E Land Use Change to Non-Agriculture**

**REPORTING DATE:**

If any of these activities are checked in Item 1, return the completed FSA-153 within ninety (90) days from the date of the transaction.

**ITEM 8.** The date entered would be as follows for the activity checked in Item 1:

- Box A or B** - Date acquired
- Box C** - Date disposed of
- Box D or E** - Date land use changed

ADDITIONAL INFORMATION (Use additional sheets if more space is needed)

<sup>1/</sup> Significant interest or substantial control as defined in 7 CFR Part 781.2 (k).

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MEMO TO: TERRY TOLMAN  
VIA E-MAIL ([Terry@RAMaui.com](mailto:Terry@RAMaui.com))

EVELYN PROCTOR  
VIA E-MAIL ([Evelyn@RAMaui.com](mailto:Evelyn@RAMaui.com))

F R O M: DAVID M. JORGENSEN 

SUBJECT: Agricultural Foreign Investment Disclosure Act (AFIDA)

D A T E: APRIL 6, 2007

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Pursuant to the request made at the last Board meeting, please consider the following regarding the requirements of the Agricultural Foreign Investment Disclosure Act (AFIDA).

Short answer: Per Roy Sakamoto, it turns out that the standard forms committee has revised the DROA form to include a revised C-40, which states as follows:

**C-40 Additional Disclosures Required by Foreign Buyers and Sellers.** Buyer and Seller understand that under statutes and ordinances such as the Agricultural Foreign Investment Disclosure Act of 1978, the International Investment and Trade in Services Survey Act, and the revised Ordinances of the City and County of Honolulu, among others, disclosures are required by foreign Buyers and/or Sellers under certain conditions.

Roy also reported that the new Purchase Contract form will also provide a similar disclosure. Other than providing RAM members with further education on this subject, I don't think more action is necessary regarding AFIDA at this time.

Background

As you know, this issue arose because Calvin Mobbs, and most of the rest of the Board as well as many other realtors received a letter and a notice from James Robello with USDA Farm Service Agency here on Maui. A copy of the letter and notice received by Calvin is attached.

The USDA notice asked for assistance in reminding RAM members that there is a requirement that any foreign person or entity

TERRY TOLMAN  
April 6, 2007  
Page 2

that acquires, transfers or holds an interest in U.S. Agricultural land report that fact to the government. If such a report is not made, there are severe monetary penalties. I was asked to look into the hows and whys of this requirement and to make suggestions as to how RAM's members can protect themselves in regards to this reporting requirement imposed on buyers and sellers of ag lands.

I spoke with James Robello from USDA who sent the letter and notice. He advised that he's been doing so for the past several years and that he sent the notice to probably 250 realtors. He said he used to also publish a notice the newspaper once a year or so but he didn't do that this year.

It's the position of USDA that all owners of lands designated as agricultural are required to submit form FSA-153 (a copy is also attached for your reference) to the Farm Service Agency when they acquire, sell or hold ag lands. Once the form is submitted, it will be reviewed and then sent to Washington. If there is no "ag use" of the property, the owner will receive a notice back stating that the property is exempt from any further reporting requirements under AFIDA. Mr. Robello did point out that he and the USDA do have access to aerial photos so they can check a use of property if they need to without actually visiting the property, although this "rarely happens". Now if they were to receive a complaint from someone . . . .

Please note that if ag land is owned and not used for ag purposes and then the use changes to an ag use, a new form will have to be submitted by the owner to report that change in use, and if non-ag use property is transferred, the selling and the buying owners are required to each submit new forms to FSA for review and determination.

Except in such cases related to a change in ownership or use of the property, no additional form needs to be filed after the initial submittal. In other words, it is not an annual form.

I was subsequently able to get in touch with Roy Sakamoto who said the Standard Forms Committee had been wrestling with disclosure issues beyond what is currently included in the realtor forms for some time and he thought language had been inserted. Sure enough, when he double-checked, he was able to confirm that the revised DROA form ("RR201 Rev. 6/06 For Release 11/06") does in fact contain a brief disclosure about AFIDA had been included in new C-40. A copy of the DROA page with revised C-40 is attached. He also stated that the disclosure will also be included in the forthcoming Purchase Contract form.

TERRY TOLMAN  
April 6, 2007  
Page 3

Roy also agrees that it is an educational issue - even though a disclosure statement is now included in the DROA, most realtors and certainly the vast majority of buyers and sellers have no idea what AFIDA is or what is required. It would be wise to provide additional information to RAM's members on this point, in one form or another.

I hope this information is helpful to the Board and its members. Please let me know if you have any additional questions or comments.

H:\Data\Dave\Letters\RAM\Terry Tolman (04-06-07)

Enclosures

**MEDIATION AND ARBITRATION**

- C-32 **Mediation.** If any dispute or claim arises out of this DROA during this transaction or at any time after closing between Buyer and Seller, or between Buyer and/or Seller and a Brokerage Firm and all its licensees assisting in this transaction, and the parties to such dispute or claim are unable to resolve the dispute, Buyer and Seller agree in good faith to attempt to settle such dispute or claim by non-binding mediation. This paragraph shall not apply to any complaint of unethical conduct against a Brokerage Firm and all its licensees who are obligated to comply with the Code of Ethics of the National Association of REALTORS®. Such complaints must be brought before the Local Board of REALTORS® of which the Brokerage Firm and all its licensees are members
- C-33 **Arbitration.** If any dispute or claim arises out of this DROA during this transaction or at any time after closing, between Buyer and Seller, or between Buyer and/or Seller and a Brokerage Firm and all its licensees assisting in this transaction and if such dispute cannot be resolved through mediation, then the parties are encouraged to consider arbitration. It is recommended that the parties seek legal counsel to make this determination.
- C-34 **Third Party Claims.** It is understood that if such dispute or claim is made by or against a third party who is not obligated or willing to mediate or arbitrate such dispute or claim, then Buyer and Seller shall not be required to mediate or arbitrate such dispute or claim.

**TITLE**

**Preliminary Title Report.** Escrow is instructed to promptly order a Preliminary Title Report on the Property for delivery to Seller, Buyer and their agents.

- C-35 **Title.** Seller agrees, subject to Paragraph C-36 if selected, to convey the Property with warranties vesting marketable title in Buyer, free and clear of all liens and encumbrances EXCEPT: (a) easements, covenants, conditions, reservations or restrictions now of record WHICH DO NOT MATERIALLY AFFECT THE VALUE OF THE PROPERTY and (b) \_\_\_\_\_

(Choose C-36 OR C-37)

- C-36 If the Preliminary Title Report, or any other report reveals that title cannot be delivered by Seller in accordance with Paragraph C-35, Seller shall use Seller's best efforts to cure any defects. If, within \_\_\_\_\_ days following receipt of any reported discrepancies Seller is unable to cure such defects in title, Buyer may elect to purchase the Property with such defect(s) in title and Seller shall not be liable if Seller had acted in good faith. If Buyer elects not to accept the Property with such defects, either Buyer or Seller may terminate this DROA and the Termination Provision (C-21) shall apply.
- C-37 If Buyer is not satisfied with the Preliminary Title Report, Buyer may elect, within \_\_\_\_\_ days of Buyer's receipt of the Preliminary Title Report, to terminate this DROA and the Termination Provision (C-21) shall apply.

**TRANSACTIONS INVOLVING FOREIGN OR NON-RESIDENT BUYER AND SELLER**

- C-38 **HARPTA Withholding Required if Seller is a Non-Resident of the State of Hawaii.** Under Hawaii law, if Seller is a non-resident person or entity (corporation, partnership, trust, or estate) of the State of Hawaii, Buyer must withhold a specified percentage of the "amount realized" by Seller on the sale of the Property and forward the amount with the appropriate form to the State Department of Taxation. Such withholding may not be required if Seller obtains and provides Buyer with an authorized exemption or waiver from withholding. If Seller does not provide Buyer with a certificate of exemption or waiver from HARPTA within fourteen (14) days of the Acceptance Date, Escrow is hereby authorized and instructed to withhold/collect from Seller the required amount at closing and forward it to the State Department of Taxation.
- C-39 **FIRPTA Withholding Required if Seller is a Foreign Person.** Under the Internal Revenue Code, if Seller is a foreign person or entity (non-resident alien, corporation, partnership, trust, or estate), Buyer must generally withhold a specified percentage of the "amount realized" by Seller on the sale of the Property and forward this amount with the appropriate Internal Revenue Service ("IRS") form. Such withholding may not be required if Seller obtains and provides Buyer with an authorized exemption or waiver from withholding. If Seller does not provide Buyer with a certificate of exemption or waiver from FIRPTA within fourteen (14) days of Acceptance Date, Escrow is hereby authorized and instructed to withhold/collect from Seller the required amount at closing and forward it to the IRS.
- C-40 **Additional Disclosures Required by Foreign Buyers and Sellers.** Buyer and Seller understand that under statutes and ordinances such as the Agricultural Foreign Investment Disclosure Act of 1978, the International Investment and Trade in Services Survey Act, and the revised Ordinances of the City and County of Honolulu, among others, disclosures are required by foreign Buyers and/or Sellers under certain conditions.



\_\_\_\_\_  
BUYER'S INITIALS & DATE

\_\_\_\_\_  
SELLER'S INITIALS & DATE