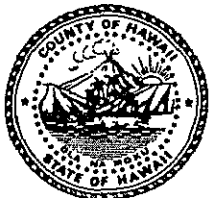


Harry Kim
Mayor



Christopher J. Yuen
Director

Roy R. Takemoto
Deputy Director

County of Hawaii

PLANNING DEPARTMENT

25 Aupuni Street, Room 109 • Hilo, Hawaii 96720-4252
(808) 961-8288 • Fax (808) 961-8742

February 27, 2001

Bill M. & Suzanne Brodbeck
P.O. Box 1089
Kailua-Kona, Hawaii 96745

Dear Mr. and Mrs. Brodbeck:

Additional Farm Dwelling Agreement

Applicant: Bill M. & Suzanne Brodbeck

Land Owner: Bill M. & Suzanne Brodbeck and Laura Burnett

Tax Map Key: 8-2-011:024

This is in response to your letter dated February 9, 2001, in which you requested reconsideration of our previous denial of your application for an Additional Farm Dwelling Agreement for the subject parcel. Although the merits of your AFDA application do not warrant approval for a second farm dwelling on the subject property, the Department was unable to complete the processing of your application within the sixty (60) days required by Planning Department rules. Therefore, I am reversing my previous decision to deny your AFDA application.

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. A notarized affidavit that the additional dwelling shall be used for farm-related purposes in the form of the proposed Additional Farm Dwelling Agreement.
2. Name and address of the landowner or lessee, if the latter has a lease on the building site with a term exceeding one year from the date of the farm dwelling agreement.

1390

MAR 07 2001

3. Written authorization of the landowner if the lessee filed the request.
4. A farm plan or evidence of the applicant's continual agricultural productivity or farming operation within the County, including an explanation of why this additional farm dwelling is needed in connection with the agricultural productivity or farming operation.
5. In support, evidence of a State of Hawaii Department of Taxation's General Excise (GE) Tax License has also been presented.

Findings:

1. In Chapter 205, Hawaii Revised Statutes, 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 Farm Plan, GE Tax License (ID number 30032109), and the agreement to use the dwelling for agricultural or farm-related activity on the building site demonstrate that there is agricultural activity and that income from your agricultural activity is being taxed.
3. In addition, the following agencies have submitted their comments as stated below:
 - (a) Department of Water Supply (Memorandum dated November 9, 2000):

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

Our records show that this property does not have an account with the Department and therefore, does not have water service with us. The Department's nearest facility is an 8-inch waterline in Hawaii Belt Road, approximately 800 feet from the front of the applicant's parcel.

This lot was created under Water Variance No. 601. The Department has no objections to the application subject to the applicant being responsible for following the conditions of the approved variance. The variance specifies that the additional farm dwelling cannot be hooked up to any existing departmental water services and must be on a catchment system.

Should there be any questions, please call our Water Resources and Planning Branch at 961-8665.”

(b) Real Property Tax Office:

No comments were received.

(c) Department of Health (Memorandum dated November 8, 2000):

“By current rules, the subject lot is located in a Critical Wastewater Disposal Area. A lot size of five (5) acres or more are required for the use of a cesspool. Only one (1) cesspool would be allowed on the lot. A septic tank system would be needed if a second wastewater disposal system is needed on this lot.”

Decision:

In view of the above, your request to construct a second farm dwelling is approved subject to the following conditions:

1. The second farm dwelling shall only be used to provide shelter for persons involved in the agricultural or farm-related activity on the building site.
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. 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.

4. In reference to the Department of Water Supply's comment (**concerning the catchment system**), 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-water catchment system with a minimum capacity of 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 farm dwelling should be provided with and maintain a private water supply system with an additional minimum storage capacity of 3,000 gallons for fire fighting and other emergency purposes. The emergency water supply system, including the necessary compatible connection devices and the location of the water storage unit on the property, should meet with the approval of the Hawaii County Fire Department.

The Planning Director has completed the appropriate portions of the enclosed Additional Farm Dwelling Agreement. **You must record this approved Additional Farm Dwelling Agreement with the State Bureau of Conveyances and/or Land Court within thirty days of receipt of this approval.** In sending this document out for recordation, please note the following:

1. The original and one copy of the document must be submitted for recordation.
2. A check in the amount of \$25.00 to cover the recordation fee should be made out to the State of Hawaii, Bureau of Conveyances and attached to the Agreement. Their address is as follows:

State of Hawaii
Bureau of Conveyances
P.O. Box 2867
Honolulu, HI 96803

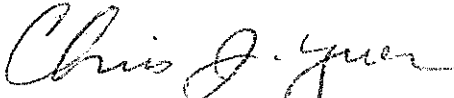
3. Include a self-addressed stamped envelope to have the recorded document returned to you.

Bill M. & Suzanne Brodbeck
Page 5
February 27, 2001

You must submit a copy of the recorded Additional Farm Dwelling Agreement to the Planning Director prior to Planning Department approval of a building permit application for the farm dwelling.

Should you have questions or require further information, please feel free to contact Larry Brown of my staff at 961-8288.

Sincerely,



CHRISTOPHER J. YUEN
Planning Director

LMB:pak
P:\WPWIN60\Larry\FDA\Brodbeck 8-2-11-24 apvl.doc

enclosure

xc: Mr. Milton Pavao, DWS
Mr. Frank Manalili, Finance Department
Planning Department – West Hawaii Office

MATT Jewel

J 29-1000
Kukini tower - McDonalds

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

BUREAU OF CONVEYANCES

DATE MAR 29 2001

DOCUMENT NO. 2001-04590

AFTER RECORDATION, RETURN BY MAIL (X) PICK-UP ()

Bill M. Brodbeck
P.O. Box 1089
Kailua-Kona, HI 96745

TITLE OF DOCUMENT:

Additional farm dwelling application

PARTIES TO DOCUMENT:

County of Hawaii
Bill M. & Suzanne Brodbeck & Laura Burnette

PROPERTY DESCRIPTION:

TMK: 3/8-2-11-24

ADDITIONAL FARM DWELLING AGREEMENT

THIS AGREEMENT made and executed this 23 day of August, 2000, by and between Bill M. & Suzanne Brodbeck & Laura Burnette herein called the "First Party," whose mailing address is P.O. box 1089, Kailua-Kona, Hawaii 96745 _____, and the COUNTY OF HAWAII, herein called the "Second Party."

IT IS HEREBY AGREED that the First Party may construct an additional farm dwelling located on the property described by Tax Map Key 3/8-2-11-24 situated within the State Land Use Agricultural district and zoned Ag-5 by the Second Party.

IT IS HEREBY ACKNOWLEDGED that the First Party is the Legal Owner (legal owner/lessee) of the property above described.

IT IS HEREBY FURTHER AGREED that this approval to construct an additional farm dwelling is given subject to the following conditions:

1. The additional farm dwelling shall be used to provide shelter to only person(s) involved in the agricultural or farm-related activity on the building site.
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. The landowner or lessee shall record the approved Additional Farm Dwelling Agreement with the State of Hawaii, Bureau of Conveyances and/or with the

Land Court System within thirty days from the date of receipt of approval. A copy of the recorded Additional Farm Dwelling Agreement shall be submitted to the Planning Director of the County of Hawaii prior to approval of the building permit.

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 imposed 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


BILL M. BRODBECK & SUZANNE BRODBECK


LAURA BURNETTE

SECOND PARTY


Planning Director CHRIS J. YUEN
County of Hawaii Planning Department

COUNTY OF HAWAII)

SS.

On this 6th day of March 2001, before me personally appeared

Chris J. [Signature] to me personally known, who, being by me duly sworn, did

say that he/she 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 Chris J. [Signature] acknowledged the instrument to be the free act and deed of

said Planning Department, County of Hawaii.

[Signature]
Notary Public, State of Hawaii

My commission expires: 7/17/02

LS.

COUNTY OF HAWAII

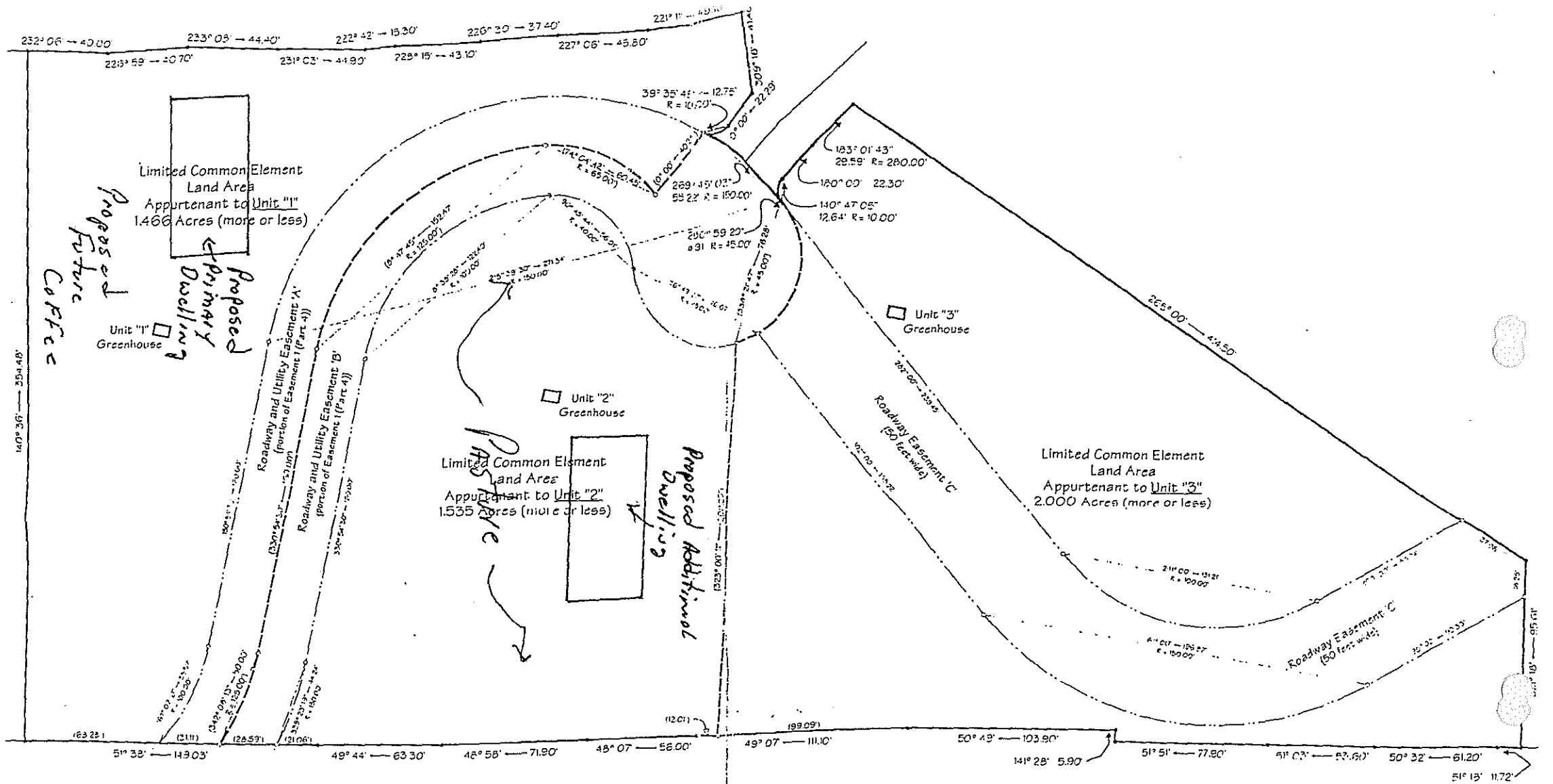
) SS:
)

On this 23rd day of AUGUST, 2000, before me personally appeared Bill H. Bidlock, to me known to be the person described in and who executed the foregoing instrument, and acknowledged that he/she executed the same as his/her free act and deed.

13

ROBYN K. NAIFE
Notary Public, State of Hawaii ROBYN K. NAIFE

My commission expires: 9-02-2002



SITE PLAN

Scale: 1" = 40'-0"

