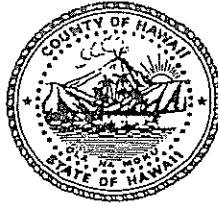


Harry Kim
Mayor



Christopher J. Yuen
Director

Roy R. Takemoto
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

June 29, 2005

Clyde & Kathleen Willey
P.O. Box 121
Hawi, Hawaii 96719

Dear Mr. & Mrs. Willey:

Additional Farm Dwelling Agreement Application (2004-0062)
Applicant: Clyde & Kathleen Willey
Owner: Clyde T. Willey
Kathleen N. Willey
State Land Use: Agricultural
County Zoning: Agricultural (A-20a)
Land Area: 3.00 acres
TMK: (3) 5-5-002: 057

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 and address of the landowner(s) or lessee(s), if the latter has a lease on the building site with a term exceeding one year from the date of the farm dwelling agreement.
2. Written authorization of the landowner(s) if the lessee filed the request.
3. 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. Your farm plan included the following proposed income producing agricultural activities:
 - a. Proposed agricultural activities include the following:
 - i. To plant, maintain and harvest 140 macadamia nut trees.

- b. The initial labor man-hours are approximately 228 hours. The estimated labor man-hours are approximately 19.5 hours per week to maintain and harvest.
4. In additional support, a State of Hawaii Department of Taxation's General Excise (GE) Tax License has also been presented.
5. 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, Hawaii 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 prior to June 4, 1976, which, pursuant to HRS §205-4.5(b), allows the first dwelling on the lot to be a single-family dwelling.
3. The Farm Plan, GE Tax License (ID number W01234392-01 and W30536418-01), 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 and the income will be taxed.
4. In addition, the following agencies have submitted their comments as stated below:
 - a. Department of Water Supply (DWS) (Letter dated May 26, 2005):

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

The property does not have an existing water service with the Department. Water is currently available for the first dwelling from a 6-inch waterline fronting the parcel on Kaauhuhu Road. Inasmuch as this application is proposing an additional detached dwelling, the installation of a separate 5/8-inch meter by the applicant would normally be required in accordance with Department regulations. However, the Department's existing water system facilities cannot

support an additional meter for the proposed additional farm dwelling at this time. Extensive improvements and additions, including source, storage, transmission and distribution facilities, must be constructed. Currently, sufficient funding is not available and no time schedule is set.

It is our understanding that the applicants will use a catchment system for their water for the additional farm dwelling; therefore, the Department has no objections to the application.

Should there be any questions, please contact Ms. Shari Komata of our Water Resources and Planning Branch at 961-8070, extension 252.”

b. Real Property Tax Office (RPT):

There were no comments received.

c. Department of Health (DOH) (Memorandum dated June 9, 2005):

“The Health Department found no environmental health concerns with regulatory implications in the submittals.”

Decision:

In view of the above, your request to construct a **second (first AFD) dwelling** is subject to the following conditions:

1. The additional farm dwelling 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 Additional Farm Dwelling 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 Additional Farm Dwelling Agreement 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. The First Party shall adhere to 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


Clyde & Kathleen Willey
June 29, 2005
Page 4

Supply, Fire Department and State Department of Health and other reviewing agencies/divisions listed on the Building Permit Application.

4. Your Additional Farm Dwelling Agreement has been approved based entirely on existing agricultural activity as summarized previously in this letter.
5. The First Party shall allow the Second Party or its representative to inspect the farm upon reasonable prior notice.
6. This Additional Farm Dwelling Agreement shall be valid for a period of two (2) years from the date of this approval letter to secure a building permit for the additional farm dwelling. Failure to secure a building permit for this additional farm dwelling on or before June 30, 2007 may cause the Director to initiate proceedings to invalidate the AFDA.

If you have any questions please call Deanne Bugado of our West Hawaii Office at 327-3510.

Sincerely,


CHRISTOPHER J. YUEN
Planning Director

BM:deb
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Enclosure: AFDA document
AFDA document instruction sheet

xc: Mr. Milton Pavao, DWS
Mr. Mike McCall, RPT
Planning Department – Kona

AFTER RECORDATION, RETURN BY MAIL TO:

County of Hawaii Planning Department
101 Pauahi Street, Suite 3
Hilo, Hawaii 96720

TITLE OF DOCUMENT:

ADDITIONAL FARM DWELLING AGREEMENT

PARTIES TO DOCUMENT:

**FIRST PARTY: CLYDE T. WILLEY
KATHLEEN N. WILLEY**

SECOND PARTY: COUNTY OF HAWAII

PROPERTY DESCRIPTION:

TMK: (3) 5-5-002:057

ADDITIONAL FARM DWELLING AGREEMENT

THIS AGREEMENT made and executed this 29th day of June, 2005, by and between CLYDE T. WILLEY and KATHLEEN N. WILLEY, herein called the "First Party," whose mailing address is P.O. Box 121, Hawi, Hawaii 96719, 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) 5-5-002:057 situated within the State Land Use Agricultural district and zoned Agricultural (A-20a) 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.

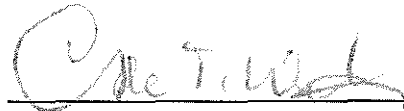
IT IS HEREBY FURTHER AGREED that should the pertinent provisions of the State and County laws and rules and regulations change to authorize said farm dwelling, upon request of the First Party, this Agreement may be reconsidered for possible amendment and/or severance.

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, 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:




Clyde T. Willey, Legal Owner



Kathleen N. Willey, Legal Owner

SECOND PARTY:



Christopher J. Yuen, Planning Director
County of Hawaii Planning Department
Roy Takemoto, Deputy Planning Director

Handwritten initials: CRJ 1/9

STATE OF HAWAII)
) SS.
COUNTY OF HAWAII)

On this 6th day of August, 2005 before me personally appeared CLYDE T. WILLEY and KATHLEEN N. WILLEY to me known to be the person described in and who executed the foregoing instrument, and acknowledged that they executed the same as their free act and deed.

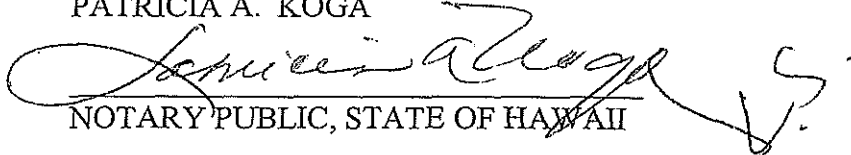
Mary Lou G. Ignacio Mary Lou G. Ignacio
Notary Public, State of HAWAII

2-9

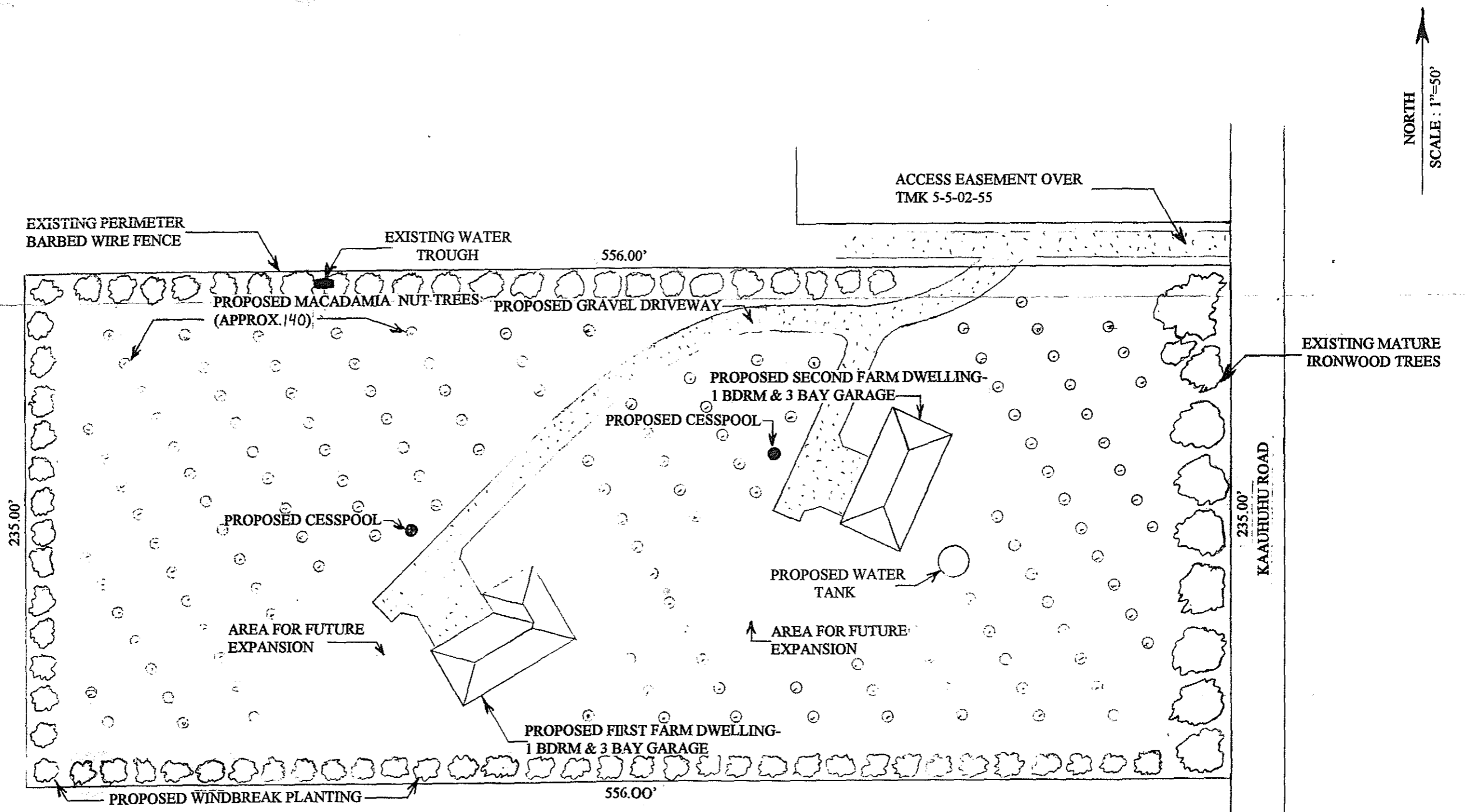
My commission expires: 8/28/2006

STATE OF HAWAII)
) SS.
COUNTY OF HAWAII)

On this 23rd day of September 2005, before me personally appeared ROY TAKEMOTO, to me personally known, who, being by me duly sworn, did say that he is the Deputy Planning Director of the County of Hawaii; and that the Planning Department of the County of Hawaii has no corporate seal; and that instrument was signed on behalf of the Planning Department of the County of Hawaii, a government agency, and said ROY TAKEMOTO, acknowledged the instrument to be the free act and deed of said Planning Department, County of Hawaii.

PATRICIA A. KOGA

NOTARY PUBLIC, STATE OF HAWAII

MY COMMISSION EXPIRES: 7/17/06



NORTH
SCALE: 1"=50'

FARM PLAN FOR:

CLYDE & KATHLEEN WILLEY
 TMK: 5-5-02-57
 3.00 ACS.