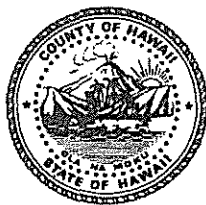


Harry Kim
Mayor



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

January 20, 2006

Ms. Jennifer L. Zelko
Carlsmith Ball LLP
121 Waianuenue Avenue
Hilo Hawaii 96721

Dear Ms. Zelko:

SUBJECT: Additional Farm Dwelling Agreement (fda-05-000096)
Applicants: David and Sharon Pettus
Land Owners: David and Sharon Pettus
State Land Use: Agricultural
County Zoning: A-40a
Land Area: 12.157 Acres
Tax Map Key: (3) 4-7-002:015

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, addresses and signatures of the applicant and of the landowner.
2. A farm plan or evidence of the applicant's proposed 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 ongoing and proposed income producing agricultural activities:

Hawaii County is an equal opportunity provider and employer.

JAN 26 2006

(a) Ongoing agricultural activities include:

- i. The parcel has been planted with macadamia nut trees. These trees are being replaced due to blight and disease. Hawaiian chili peppers and 100 coffee plants are grown and processed as well.

(b) Proposed agricultural activities include:

- i. 1-acre of Arachis Pinto "Golden Glory ground cover. 100 plus additional Coffee trees on ½-acre. 1 ½-acres of miscellaneous crops to include, but not necessarily be limited to, Cherimoya (2 trees), Atimoya (1 tree), Avocado (7 trees), Tangerine (4 trees), Ruby Grapefruit (1 tree), Orange (8 trees), Acerola (1 tree), Banana (12 trees), Sapote (2 trees), Jaboticaba (1 tree), Lychee (1 tree), Meyer Lemon (3 trees), Lime (2 trees), Fig (1 tree), Rambutan (1 tree), Mango (1 tree), Hayden Mango (2 trees), Star Fruit (2 trees), Ulu (1 tree), Pummelo (1 tree), Strawberry Guava (8 trees), Coconut (8 trees), Longan (1 tree), Lilikoi (1 vine) and Pineapple (105 plants).

(c) Labor man-hours will be 24 hours¹ per week for the various chores of developing, maintaining and harvesting the crops.

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, 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, Hawaii G.E. Tax license (GE ID Number W00893418-01) and the agreement to use the dwelling for agricultural or farm-related activity on the building site demonstrate that there is and will be income producing agricultural activity and that the income will be taxed. Expenditure and income receipts have also been presented.
4. In addition, the following agencies have submitted their comments as stated below:

- (a) Department of Water Supply (DWS) (Letter dated January 10, 2006):

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

For your information, 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.

As this application indicates that there is farming activity on the parcel and a previous application for a Wellness Center, the applicant shall have a licensed contractor install a backflow preventer (reduced pressure type) on the applicant’s property just after the existing meter. The backflow preventer shall be operated and maintained by the customer. A copy of our backflow preventer handout is being forwarded to the applicant to help them understand this requirement.

Inasmuch as this application is proposing an additional detached dwelling, the installation of a separate 5/8-inch meter would normally be required in accordance with the Department’s regulations. However, as the parcel is out of the Department’s service limits, a second service is not available for the proposed additional farm dwelling.

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

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

- (b) Real Property Tax Office (RPT):

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

(c) Department of Health (DOH):

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

Decision:

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

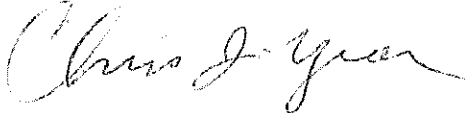
1. This approval is for one additional farm dwelling (the second dwelling on the property.. The applicant's desire to build the single-family dwelling (Building "A") is not hereby sanctioned. At the time that the applicant wishes to have Planning Department approval of the construction of building "A", either a new application for another AFDA with supporting documentation shall be submitted for approval or there shall be an application for the demolition of the AFD covered under this approval.
2. 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.
3. 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.
4. 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.
5. The First Party shall comply with 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.

6. The applicant is required to fulfill all obligations as outlined in the various correspondences with this Department with regard to remedies of Alleged Zoning Violation(s).
7. 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 (owners and lessees) 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 Hawaii Planning Department) of the Agreement may allow time extensions and modifications for good cause shown by First Party.
8. The First Party shall allow the Second Party or its representative to inspect the farm upon reasonable prior notice.
9. This Additional Farm Dwelling Agreement shall be valid for a period of two (2) years from the date of this approval letter. The applicant must secure a building permit for the additional farm dwelling within that time. Failure to secure a building permit for this additional farm dwelling on or before January 21, 2008 may cause the Director to initiate proceedings to invalidate the AFDA.
10. 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 Hawaii County Fire Department.

Ms. Jennifer L. Zelko
Carlsmith Ball LLP
Page 6
January 20, 2006

Should you have any questions, please contact Jonathan Holmes of this office.

Sincerely,



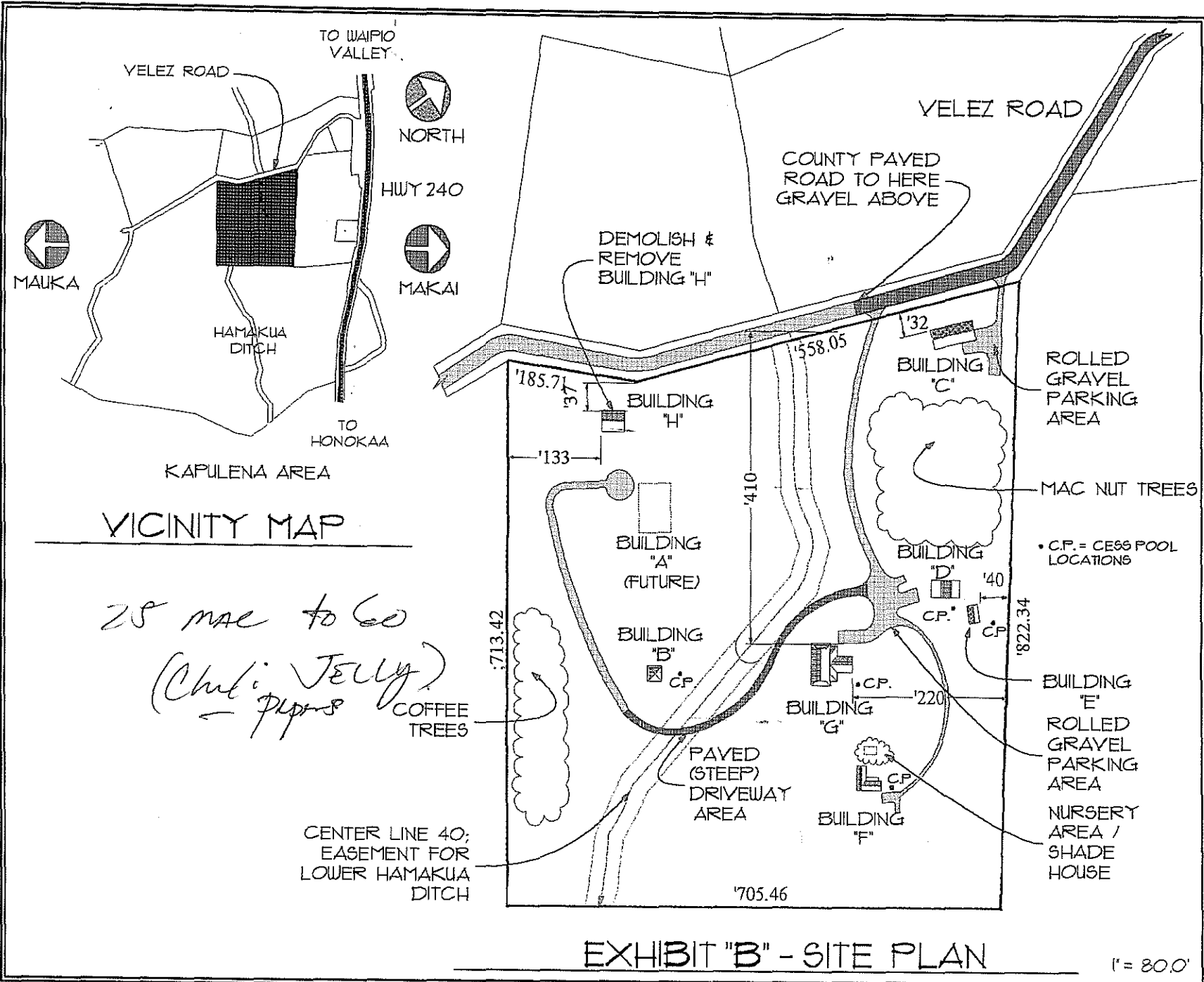
CHRISTOPHER J. YUEN
Planning Director

JRH:cd
p:\afda\afdajrh\apvl\pettusapvl.doc

Enclosures: AFDA document
AFDA document instruction sheet

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

David and Sharon Pettus
P.O. Box 1405
Honokaa, Hawaii 96727



Box 5044 Honokaa
Hawaii 96727

SITE PLAN
WELLNESS RETREAT CENTER

5/8/2004 8:03 AM FROM: 808 775 9262 TO: 3299450 PAGE: 002 OF 002

Owner: D & S Pettus
 Contact #: 962 6293
 Last Rev: April 25, 2004
 Drawn By: McB, 345 8900

TMK: 3.4.7.2:15

B