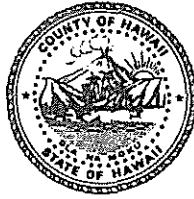


Harry Kim
Mayor



Christopher J. Yuen
Director

Brad Kurokawa, ASLA
LEED® AP
Deputy Director

County of Hawaii
PLANNING DEPARTMENT

101 Pauahi Street, Suite 3 • Hilo, Hawaii 96720-3043
(808) 961-8288 • FAX (808) 961-8742

August 7, 2006

Mr. Sidney Fuke, Planning Consultant
100 Pauahi Street, Suite 212
Hilo, Hawaii 96720

Dear Mr. Fuke:

SUBJECT: Additional Farm Dwelling Agreement (fda-06-000118)
Applicants: Sidney Fuke, Planning Consultant, Agent for
Len Sutton and Jane Sutton
Land Owners: Len Sutton and Jane Sutton
State Land Use: Agricultural
County Zoning: A-20a
Land Area: 21.9 Acres
Tax Map Key: (3) 2-6-028:017

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, address and signatures of the applicants/landowners.
2. A farm plan or evidence of the applicant's continual agricultural productivity or farming operation within the County, including an explanation of why this AFD is needed in connection with the agricultural productivity or farming operation.

Your farm plan included the following ongoing income producing agricultural activities:

- (a) Ongoing agricultural activities include the following:

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- i. The property has nearly 700 Macadamia trees on about 8 acres and approximately 1 acre of mixed fruit trees (primarily avocado and rambutan).
- ii. Present man-hours are 40+ per week.

(b) Proposed agricultural activities include the following:

- i. Fruit and macadamia trees will be planted on an additional 4+ acres (approximately 2 acres of each).
- ii. Anticipated man-hours with the additional plantings and farm labor living in the additional farm dwelling will likely exceed 80 per week.

(c) The property is dedicated to agricultural use.

3. In support, evidence of a State of Hawaii Department of Taxation's General Excise (GE) Tax License (W40228714-01) has been presented.
4. 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 by subdivision (SUB 5341) approved on December 27, 1985, which, pursuant to HRS §205-4.5(b), would normally require the first dwelling on the lot to be a farm family dwelling. However, this was a 23-7 subdivision of previously existing lots into the same number of lots and therefore the first dwelling is a single-family dwelling.

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3. The Farm Plan, GE Tax License 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.
4. In addition, the following agencies have submitted their comments as stated below:

(a) Department of Water Supply (DWS) (Letter dated July 7, 2006):

“Please be informed that the subject parcel is not within the Department’s existing service limits. The closest point of adequacy is an existing 6-inch waterline within Waianuenue Avenue approximately 3,450 feet south of the subject parcel.

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.

Should there be any questions, please call Mr. Finn McCall of our Engineering Division at 961-8070, extension 255.”

(b) Real Property Tax Office (RPT):

RPT did not comment as of this date.

(c) Department of Health (DOH) (Memorandum dated July 30, 2006):

“The use of individual wastewater systems is allowed. The type and number of individual wastewater systems to be used will be determined by the wastewater rules in effect at the time of building permit application.

Guidelines for Bed and Breakfast Operators

Purpose

The purpose of these guidelines is to provide interpretation of the Department of Health’s Administrative Rules, Title 11, Chapter 12, Foods establishment Sanitation, as it pertains to bed and breakfast operations until such time Chapter 11-12 is amended.

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Definitions

'Bed and Breakfast Establishment' means a single-family dwelling, including a single guest house, in which overnight accommodations and only breakfast meals are provided.

'Potentially hazardous food' means any food that consists, in whole or in part, of milk or milk products, eggs, meat, poultry, fish, shellfish, edible crustacean or other ingredients, including synthetic ingredients in a form capable of supporting rapid and progressive growth of infectious or toxigenic microorganisms. The term does not include foods that have a pH level of four and six-tenths or below of water activity (aw) value of eighty-five hundredths or less.

Notification and Permit Requirements

When required by the County Planning Department, bed and breakfast establishments may request documentation from the Department of Health. The Department of Health will provide documentation to the Planning Department once written communication from the Bed and Breakfast operators are received regarding their food service operations.

If the proposed Bed and Breakfast meal consists of commercial cereal, pastries (except custards or cream filled), breads, fruits, coffee, tea, and juice, a food establishment permit will not be required from the Department of Health at this time. This limited menu must be documented in a letter to the Department of Health.

For Bed and Breakfast operations that provide meals which include potentially hazardous foods, a food establishment permit will be required to operate. County landuse approval for operating a food establishment may also be required. A kitchen used to prepare foods for individual family consumption will not be allowed to be permitted. A separate commercial kitchen will need to be constructed.

If you have any questions regarding this guideline, please feel free to call me at 933-0917."

Decision:

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

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1. The AFD 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 AFD 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 AFDA 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. 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 shall be adhered to.
4. Your AFDA has been approved based on ongoing and expanded 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 AFDA shall be valid for a period of two (2) years from the date of this approval letter to secure a BP for the additional farm dwelling. Failure to secure a BP for this additional farm dwelling on or before August 8, 2008 may cause the Director to initiate proceedings to invalidate the AFDA.
7. 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.

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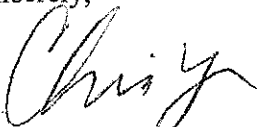
- b. Any dwelling on a water catchment system should be provided with and maintain an additional 3,000 gallon water storage capacity for fire fighting and emergency purposes. The emergency water supply system, including the necessary compatible connector system and location of the water storage facility on the property, should meet with the approval of the Hawaii County Fire Department.

8. The Department of Health's Safe Drinking Water Branch authority on drinking water quality is based on the definition of a 'public water system'. A 'public water system' means a system which provide water for human consumption through pipe or other constructed conveyance if such system has fifteen (15) service connections or regularly serves an average of at least twenty-five (25) individuals daily at least sixty (60) days out of the year. All public water systems are regulated by the Department of Health and shall be in compliance with the Hawaii Administrative Rules, Title 11, Chapter 20. Recommend the subdivision lots be connected to an existing public water system.

Concerns on water quality for lead, copper, algae and microbial and chemical contamination in private water systems have identified the need for self monitoring. The Department of Health does not support the use of these private rain catchment systems for drinking purposes since the quality may not meet potable water standards."

Should you have any questions, please feel free to contact Jonathan Holmes of this Department.

Sincerely,



CHRISTOPHER J. YUEN
Planning Director

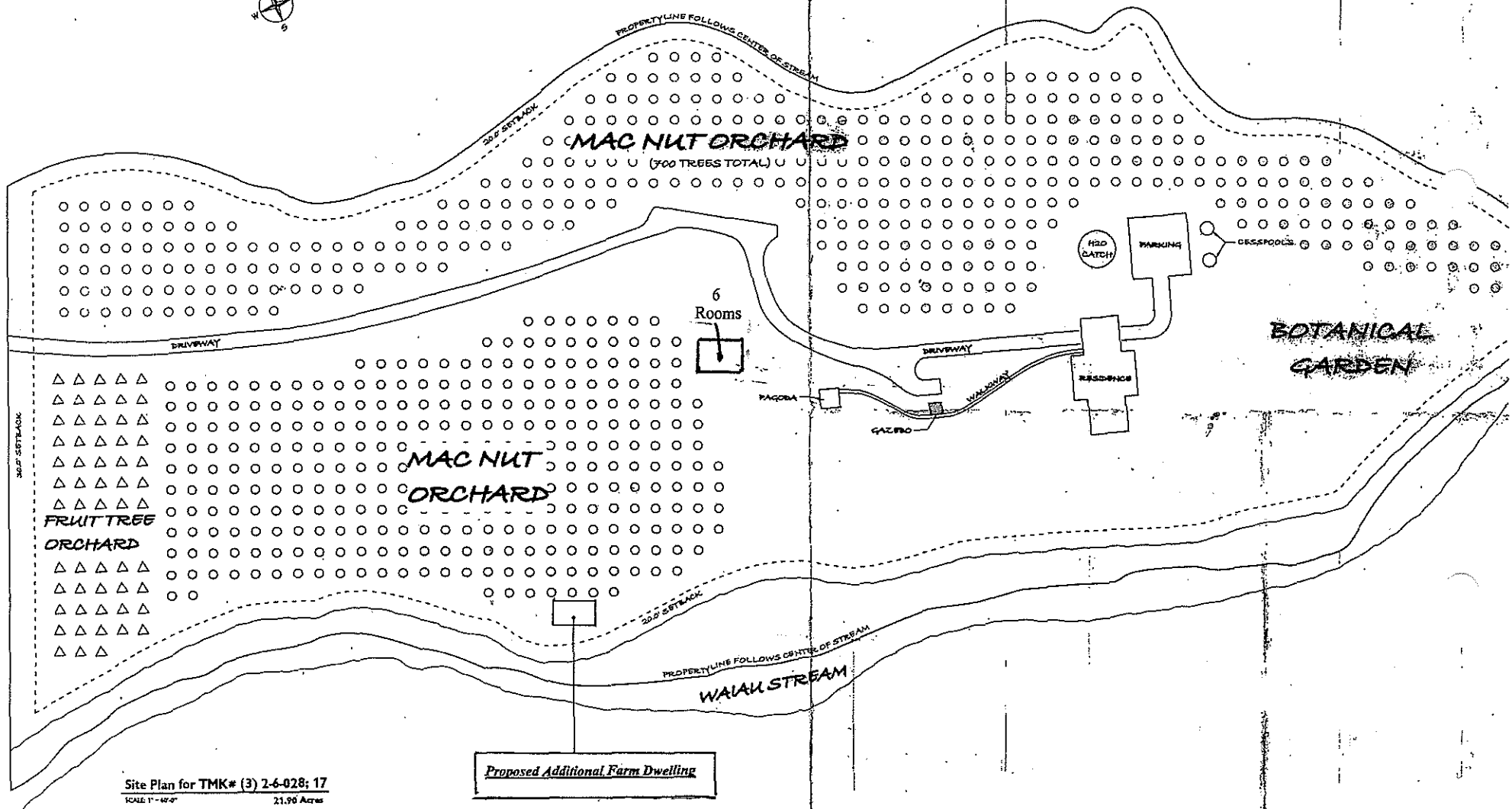
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Enclosures: AFDA document
AFDA document instruction sheet

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

Figure 3



Site Plan for TMK# (3) 2-6-028; 17
SCALE 1" = 40'-0"
21.96 Acres

Proposed Additional Farm Dwelling