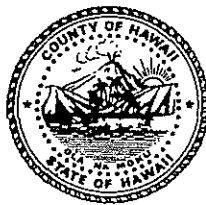


Harry Kim
Mayor



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

September 7, 2007

Stephen J. Herbert
Jamsie K. Herbert
73-4609 Kukuki Street
Kailua-Kona, HI 96740

Dear Mr. & Ms. Herbert :

Additional Farm Dwelling Agreement Application (FDA-07-000173)

Applicant:	Stephen J. Herbert Jamsie K. Herbert
Owner:	Stephen J. Herbert Jamsie K Herbert
State Land Use:	Agriculture
County Zoning:	Agricultural (A-3a)
Land Area:	3.00 acres
TMK:	(3) 7-3-024:072

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 ongoing and proposed income producing agricultural activities:
 - a. Proposed agricultural activities include the following:
 - i. Plant, maintain, harvest and process 400 coffee trees on 1 acre.

SEP 20 2007

- b. The labor man-hours are approximately 23 hours per week to maintain, harvest, process and distribute.
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 by subdivision (SUB 5864) approved on February 08, 1990, which, pursuant to HRS §205-4.5(b), requires the first dwelling on the lot to be a farm dwelling.
3. The Farm Plan, GE Tax License (ID number W80816962-01), 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 August 13, 2007):

"We have reviewed the subject application for the proposed additional farm dwelling and have the following comments.

The subject parcel has two (2) existing services (Account Nos. 930-09836 and 930-09837). Therefore, we have no objection to the proposed application, as there are existing services available for each dwelling.

However, due to there being existing and proposed agricultural activity on the subject parcel, the applicant will be required to install a reduced pressure type backflow prevention assembly for each service, within five (5) feet of the meter on private property. A copy of the Department's backflow prevention assembly is being forwarded to the applicant to help them understand this requirement.

Stephen Herbert
September 7, 2007
Page 3

Should there be any questions, you may contact Mr. Ryan Quitoriano of our Water Resources and Planning Branch at 961-8070, extension 256."

- b. Real Property Tax Office (RPT) (Memorandum dated July 31, 2007):

"Comments from the Appraisal Section:

Remarks: Neither CPR 0001 for 0002 are receiving an agricultural use assessment and do not have an application pending at this time.

Appraiser to Contact: Mary Ann Todd-Waller Phone: 327-3528/42

Comments from the collection section:

X Current

Remarks: Real Property taxes are paid through June 30, 2007

Collection personnel to contact: Winifred Todd, Tax Clerk Phone 961-8282"

- c. Department of Health (DOH) (Memorandum dated August 8, 2007 and August 21, 2007):

"We recommend that you review all of the Standard Comments on our website: www.state.hi.us/health/environmental/env-planning/landuse/landuse.html. Any comments specifically applicable to this project should be adhered to."

Decision:

In view of the above, your request to construct a **second farm 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

Stephen Herbert
September 7, 2007
Page 4

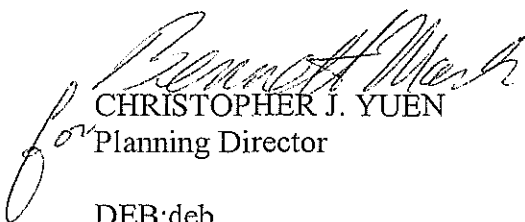
of Public Works, Department of Water Supply, Fire Department and State Department of Health and other reviewing agencies/divisions listed on the Building Permit Application.

4. 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 September 7, 2009 may cause the Director to initiate proceedings to invalidate the AFDA.
7. An initial extension of time for the performance of conditions within the permit may be granted by the Planning Director upon the following circumstances:
 - A. Non-performance is the result of conditions that could not have been foreseen or are beyond the control of the applicants, successors, or assigns and that are not the result of their fault or negligence.
 - B. Granting of the time extension would not be contrary to the General Plan or Zoning Code.
 - C. Granting of the time extension would not be contrary to the original reasons for the granting of the permit.
 - D. The time extension granted shall be for a period not to exceed the period originally granted for performance (i.e., a condition to be performed within one year may be extended for up to one additional year).

Should any of these conditions not be met or substantially complied with in a timely fashion, the Planning Director may initiate procedures to revoke this permit.

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

Sincerely,


CHRISTOPHER J. YUEN
Planning Director

DEB:deb

P:\afda\Kona AFDA\Approval\AFDAap-7-3-24-72 Herbert.doc

Stephen Herbert
September 7, 2007
Page 5

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: STEPHEN J. HERBERT
 JAMSIE K. HERBERT**

SECOND PARTY: COUNTY OF HAWAII

PROPERTY DESCRIPTION:

TMK: (3) 7-3-024:072

ADDITIONAL FARM DWELLING AGREEMENT

THIS AGREEMENT made and executed this 7th day of September, 2007, by and between STEPHEN J. HERBERT and JAMSIE K. HERBERT, hereinafter referred to as the "First Party," whose mailing address is 73-4609 Kukuki Street, Kailua-Kona, Hawaii 96740, and the COUNTY OF HAWAII, hereinafter referred to as the "Second Party."

WHEREAS,

IT IS HEREBY AGREED that the First Party may construct a second farm dwelling located on the property described by Tax Map Key (3) 7-3-024:072 situated within the State Land Use Agricultural district and zoned Agricultural (A-3a) (the "Property") 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.

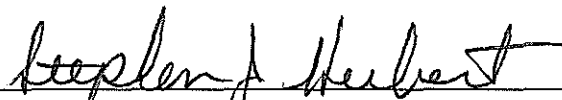
IT IS HEREBY FURTHER AGREED that should the pertinent provisions of the State of Hawai'i and County laws and rules and regulations change to authorize said farm dwelling, upon request of the First Party, its successors, heirs, personal representatives and assigns, this Agreement may be reconsidered for 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 shall impose a fine against the First Party, its successors, heirs, personal representatives and assigns, of not more than \$5,000.00 for violation of any provision under section 205-4.5, Hawaii Revised Statutes. If the First Party fails to remove such violation within six months of such citation and the violation continues to exist, the First Party shall be subject to a citation for a new and separate violation. There shall be a fine of not more than \$5,000 for any additional violation. The Second Party may impose fines for any violation of Chapter 25, Hawaii County Code, as amended, in accordance with the procedures and fine schedule outlined in Section 25-2-35 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.

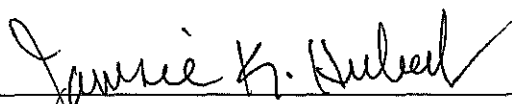
[REMAINDER OF THIS PAGE INTENTIONALLY LEFT BLANK]

IN WITNESS WHEREOF, the parties have executed this agreement on the day and year
first above written.



Stephen J. Herbert, Legal Owner

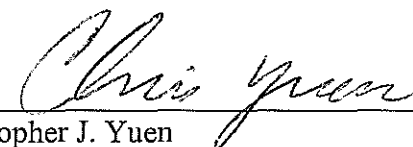
FIRST PARTY



Jamsie K. Herbert, Legal Owner

FIRST PARTY

COUNTY OF HAWAII

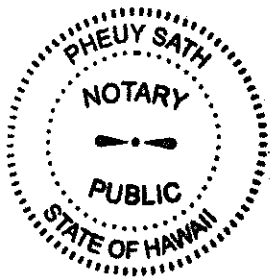
By 

Christopher J. Yuen
Its Planning Director

SECOND PARTY

STATE OF HAWAII)
) SS.
COUNTY OF HAWAII)

On this 24 day of September, 2007 before me
personally appeared STEPHEN J. HERBERT and JAMSIE K. HERBERT to me
known to be the persons described in and who executed the foregoing instrument,
and acknowledged that they executed the same as their free act and deed.




Pheuy Sath / PHEUY SATH
Notary Public, State of Hawaii

My commission expires: 8-20-2010

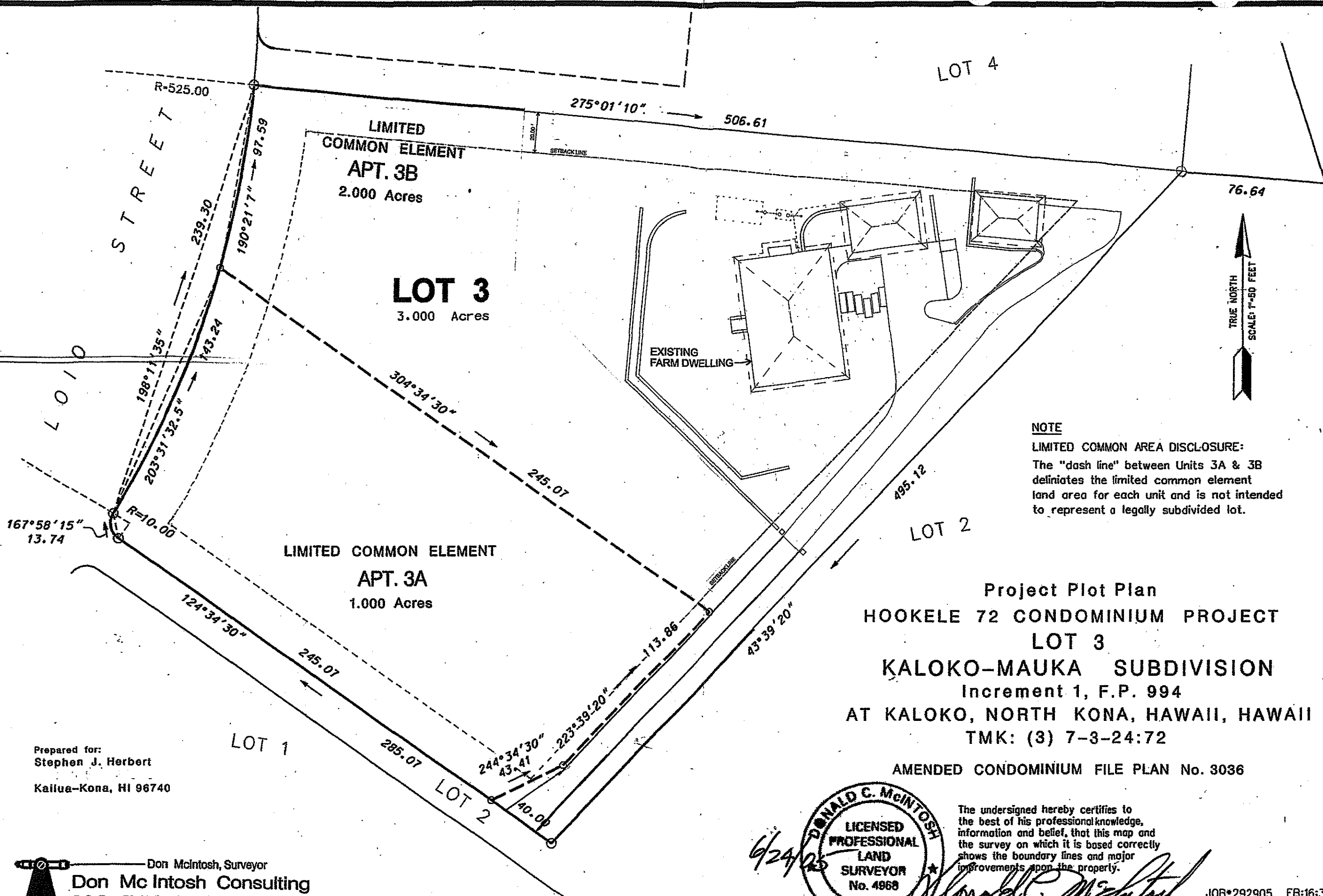
STATE OF HAWAII)
) SS
COUNTY OF HAWAII)

On this 16th day of November, 2007 before me personally appeared Christopher J. Yuen, to me personally known, who, being by me duly sworn, did say that he 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 Christopher J. Yuen 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: 07/17/10

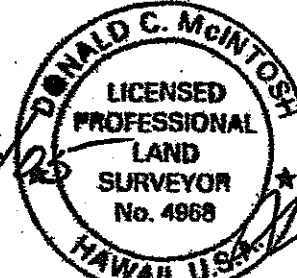
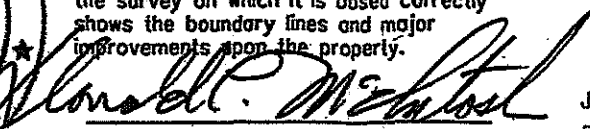


NOTE
LIMITED COMMON AREA DISCLOSURE:
The "dash line" between Units 3A & 3B
delinates the limited common element
land area for each unit and is not intended
to represent a legally subdivided lot.

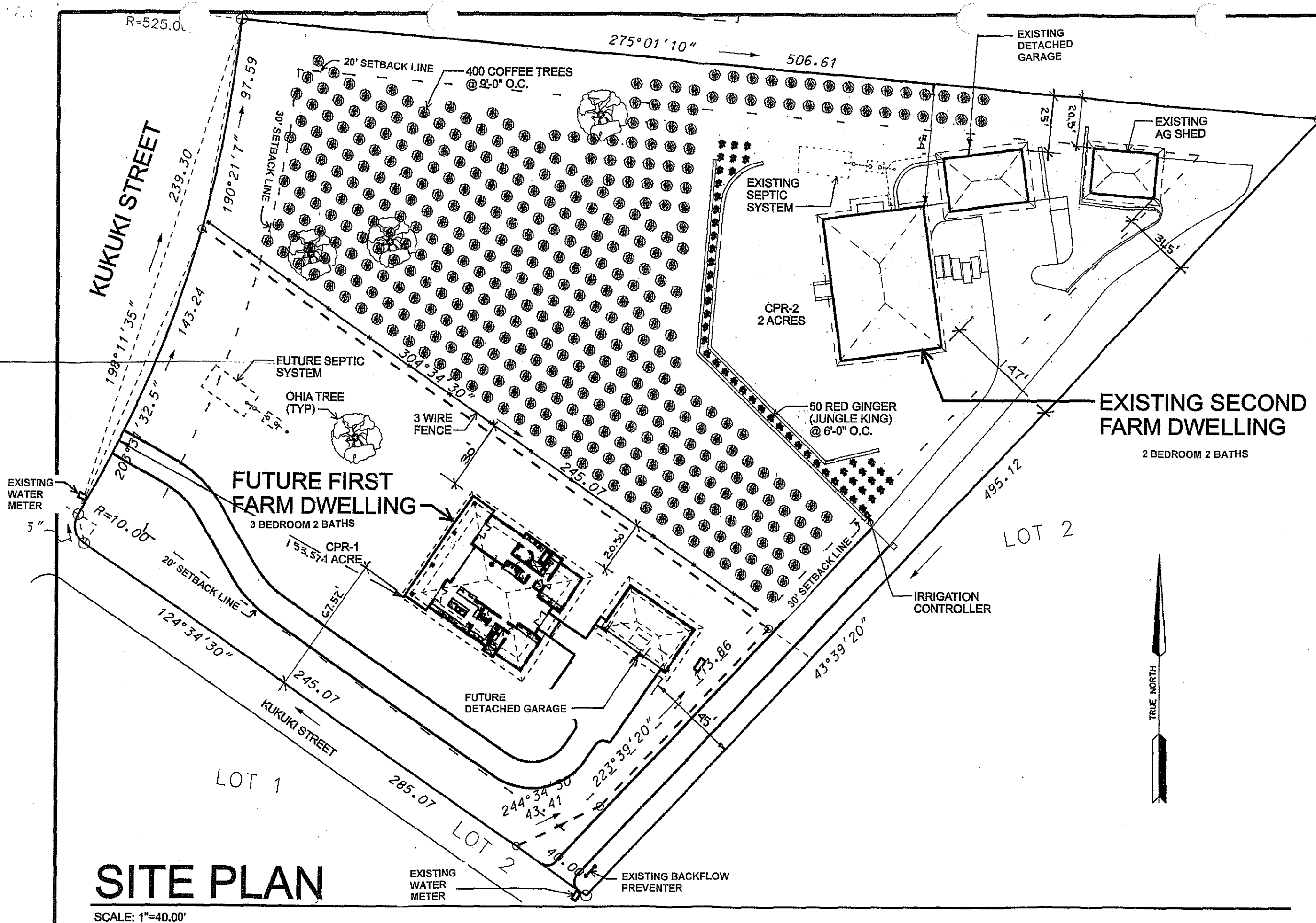
Project Plot Plan
HOOKELE 72 CONDOMINIUM PROJECT
LOT 3
KALOKO-MAUKA SUBDIVISION
Increment 1, F.P. 994
AT KALOKO, NORTH KONA, HAWAII, HAWAII
TMK: (3) 7-3-24:72
AMENDED CONDOMINIUM FILE PLAN No. 3036

Prepared for:
Stephen J. Herbert
Kailua-Kona, HI 96740

Don McIntosh, Surveyor
Don McIntosh Consulting
P.O. Box 58, Kailua-Kona, Hawaii 96745-0058
(808) 326-7472

6/24/25

The undersigned hereby certifies to
the best of his professional knowledge,
information and belief, that this map and
the survey on which it is based correctly
shows the boundary lines and major
improvements upon the property.

Donald C. McIntosh, L.P.L.S.

JOB#292905 FB:16:34
DATE: 6/19/05
Drawing: 73024072-05.con



REVISIONS	BY

PIPER DESIGNS

Pela Piper
75-5514 Kailua-Honolulu, HI 96740

331-2244

FARM PLAN FOR:

STEVE & JAMSIE HERBERT

KAILUA-KONA, HAWAII

T.M.K. (3) 7-3-24:72

DRAWN : PJP	JOB # : P05-020
DATE : 9/29/2006	SCALE : 1"=40.00'
DRAWING: SITE PLAN	SHEET 1
1 OF 1 SHEETS	

SITE PLAN

SCALE: 1"=40.00'