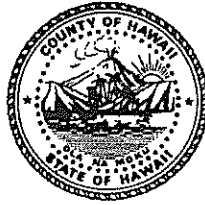


Harry Kim  
Mayor



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 24, 2008

Ms. Dhiana, Trustee  
I.L.Y. Trust  
Ms. Deborah Anapol, Trustee  
Pomakai Trust  
84-5114 Painted Church Road  
Captain Cook, HI 96704

Dear Mses. Dhiana and Anapol:

**SUBJECT:** Additional Farm Dwelling Agreement Application (FDA-08-000226)  
**Applicants:** Dhiana, Trustee of I.L.Y. Trust  
Deborah Anapol, Trustee of Pomaka'i Trust  
**Owners:** I.L.Y. Trust dated October 13, 1993  
Pomaka'i Living Trust dated December 12, 2004  
B.P. Bishop Estate  
**State Land Use:** Agricultural  
**County Zoning:** Agricultural (A-1a)  
**Land Area:** 2.8 Acres  
**TMK:** (3) 8-4-006:001

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:

SEP 24 2008

- (a) Ongoing agricultural activities include the following:
    - i. Maintain and harvest 300 coffee trees, 32 macadamia nut trees, 275 pineapple plants, 9 mango trees, 15 cacao trees, 12 avocado trees, 10-15 banana mats, 40 citrus trees, and 30 exotic fruit trees.
  - (b) Proposed agricultural activities include the following:
    - i. Remove 5 macadamia nut trees, plant 250 additional coffee trees within three years, and 10 additional cacao trees within four years.
    - ii. At owner's option, depending on market conditions over time: establish an ongoing nursery operation for production of gallon-size coffee, cacao, exotic fruit trees and other tropical plants.
  - (c) After farm expansion for the proposed agricultural activities, the labor man-hours for maintenance, harvesting and marketing will average, on an annual basis, forty (40) or more hours per week.
4. Evidence of existing engagement in agricultural productivity in the form of 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 1005) approved on April 9, 1956, which, pursuant to HRS §205-4.5(b), allows the first dwelling on the lot to be used as a single-family/farm dwelling.

3. The Farm Plan, General Excise Tax License, and the agreement to use the dwelling for agricultural or farm-related activity on the building site demonstrate that there is/will be income producing agricultural activity and the income is/will be taxed.
4. In addition, the following agencies have submitted their comments as stated below:

(a) Department of Water Supply (Letter dated September 9, 2008):

“Please be informed that the subject parcel is currently served by a 5/8-inch meter, which is adequate for only one dwelling at an average daily usage of 400 gallons. Inasmuch as this application is proposing an additional dwelling, the installation of a separate 5/8-inch meter will be required. Water can be made available from the Department’s existing 8-inch waterline within Painted Church Road, fronting the subject parcel.

Therefore, the Department has no objections to the proposed application, subject to the applicant understanding and accepting the following conditions:

1. Installation by the Department of Water Supply, of a second 1-inch service lateral to service a 5/8-inch meter, which shall be restricted to a maximum daily-flow of 600 gallons.
2. Remittance of the following charges, which are subject to change, to our Customer Service Section:

**FACILITIES CHARGE (FC):**

2<sup>nd</sup> service to the parcel \$5,500.00

**SERVICE LATERAL INSTALLATION CHARGE:**

Install one meter on Mamalahoa Highway, a State Road \$2,600.00

**Total (Subject to Change)** **\$8,100.00**

3. Installation of a backflow prevention assembly (reduced pressure type) by a licensed contractor on the applicant’s property just after the meter. If the existing meter does not have an approved backflow prevention assembly, the installation of one will also be required as there is existing agricultural activity on the property. The installation of the backflow prevention assembly must be inspected and approved by the Department before water service can be granted. A copy of our backflow prevention handout is being forwarded to the applicant to help them understand this requirement.

“Should there be any questions, please contact Mr. Ryan Quitariano of our Water Resources and Planning Branch at 961-8070, extension 256.”

Diana, Trustee  
Deborah Anapol, Trustee  
September 24, 2008  
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(b) Real Property Tax Office:

No comments were received.

(c) Department of Health (Memorandum dated September 3, 2008):

“We recommend that you review all of the Standard Comments on our website: [www.state.hi.us/health/environmental/env-planning/landuse/landuse.html](http://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 approved 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 (“AFDA”) must be returned to the Planning Department with the appropriate notarized signatures of all persons comprising the “First Party” to the agreement 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 with all required attachments has been recorded at the Bureau of Conveyances.
3. 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.
4. Your Additional Farm Dwelling Agreement has been approved based on your existing agricultural activity as presented in your farm plan and summarized previously in this letter. It is required that the First Party (owners and lessees) to the Agreement shall continue to carry out and maintain this farm plan for the life of the additional farm dwelling. The Second Party (County of Hawaii Planning Department) of the Agreement may allow modifications for good cause shown by First Party.

Diana, Trustee  
Deborah Anapol, Trustee  
September 24, 2008  
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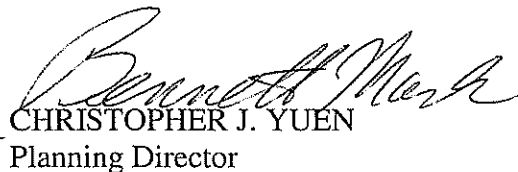
5. The First Party shall allow the Second Party or its representative to inspect the farm from time to time upon reasonable prior notice.
6. This Additional Farm Dwelling Agreement shall be valid for a period of two (2) years from the date of this approval letter to secure a building permit for the additional farm dwelling. Failure to secure a building permit for this additional farm dwelling on or before September 24, 2010 may cause the Director to initiate proceedings to invalidate the AFDA.

In reference to the Department of Water Supply's comment, we suggest the following:

1. 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.
2. 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.

Should you have questions or require further information, please feel free to contact Keola Childs of our West Hawaii office at 327-3510.

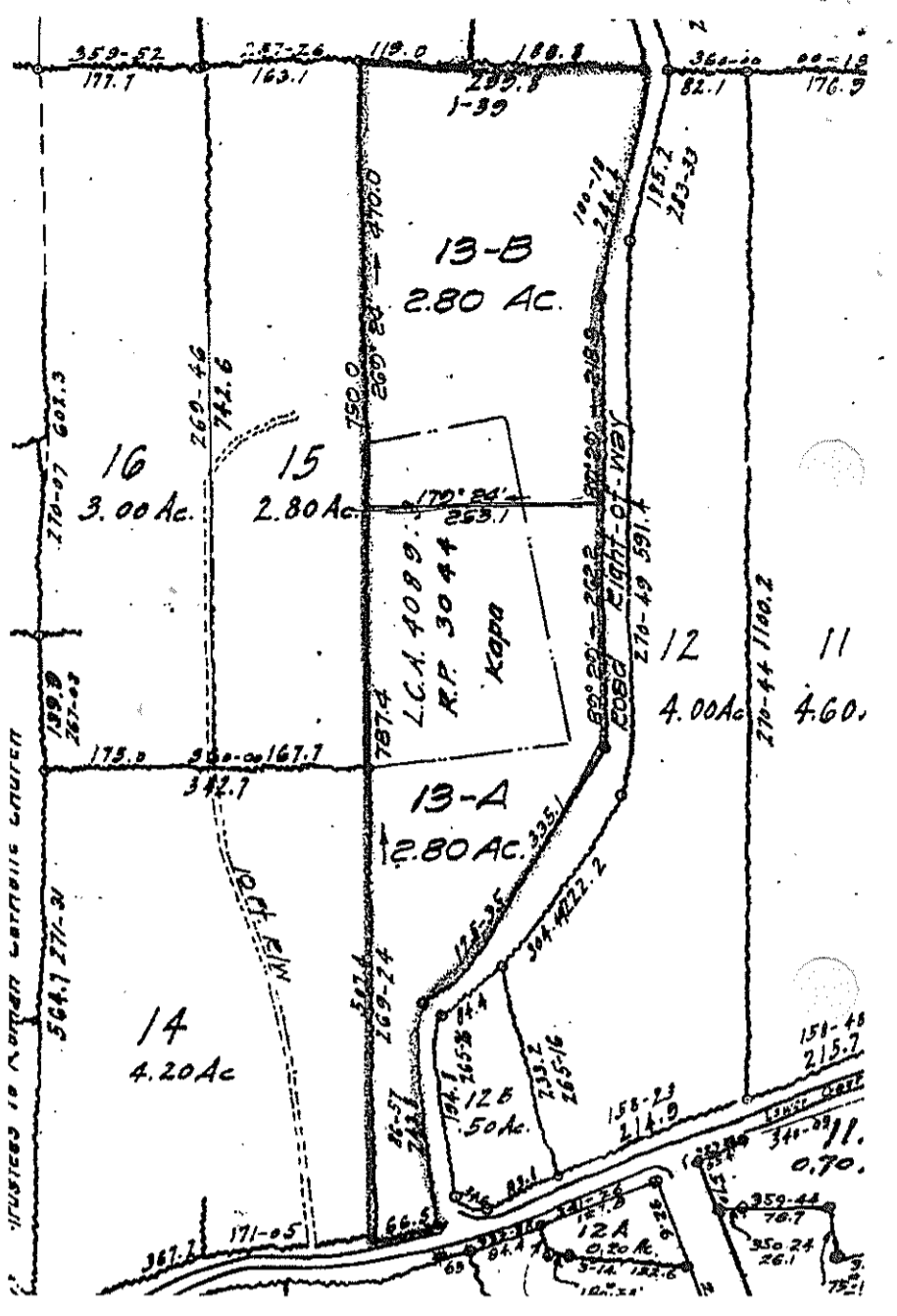
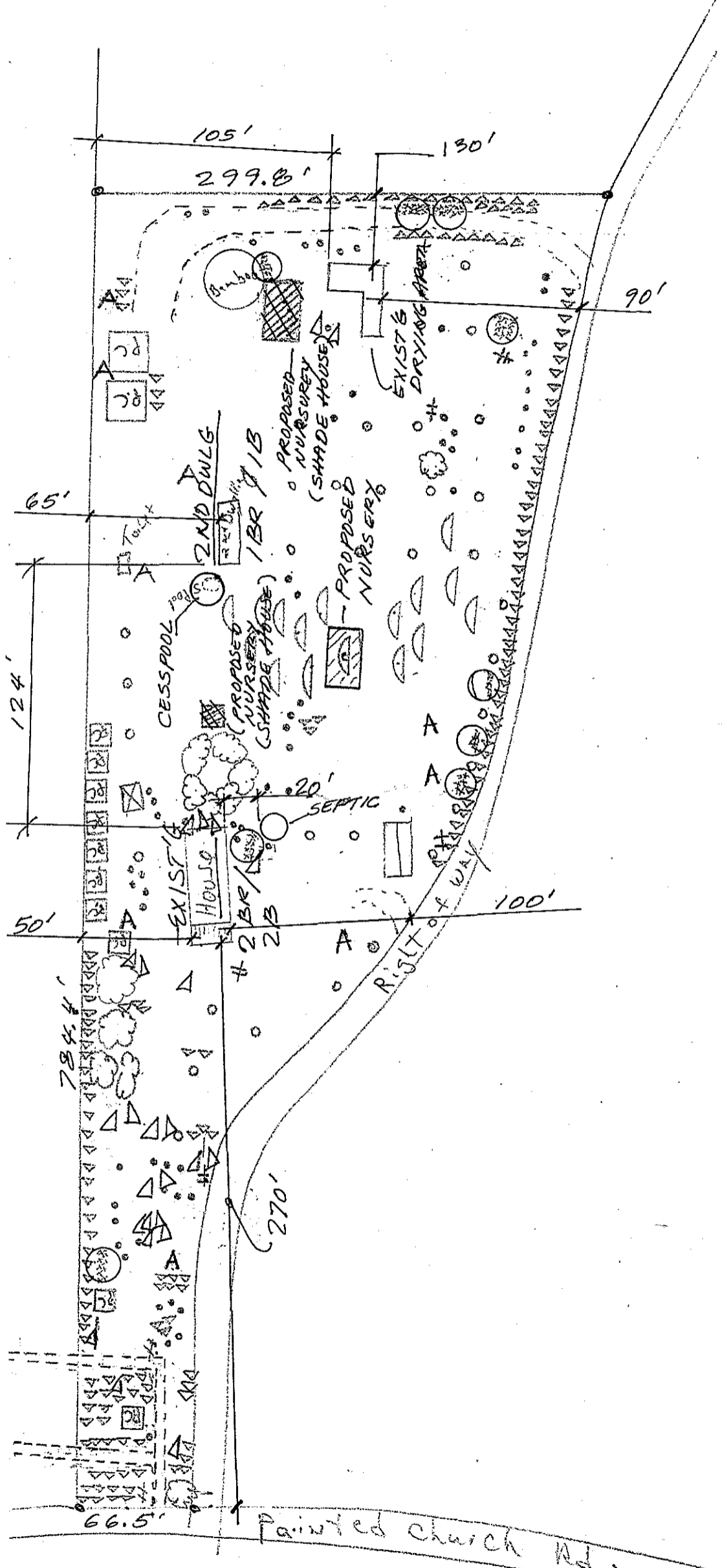
Sincerely,

  
CHRISTOPHER J. YUEN  
Planning Director

CKC:ckc  
K:\Staff\Childs\AFDA\AFDA Corr\Approval\AFDAApr-84006001 ILY Trust.doc  
Enclosure: AFDA document  
AFDA document instruction sheet

xc: Mr. Milton Pavao, DWS  
Mr. Mike McCall, RPT  
Planning Department – West Hawaii Office

B-B



LEGEND

- MANGOS - (12)
- MACNUTS - (30)
- CACAO - (15)
- AVOCADO - (9)
- PINEAPPLE - (275)
- COFFEE - (350)
- BANANA - (100)
- CITRUS - (25)
- EXOTIC TREES - (65)
- PROPOSED COFFEE
- PROPOSED NURSERY - (2)
- PROPOSED CACAO - (1)

ADDITIONAL FARM DWELLING

T.M.K. - 384-006-001  
 LO KAHU FARM 8-1-08  
 SCALE 1" = 60'  
 LOT B-A section 'B'

← North