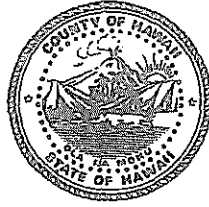


William P. Kenoi
Mayor



BJ Leithead Todd
Acting Deputy Planning Director

County of Hawaii

PLANNING DEPARTMENT

Aupuni Center • 101 Pauahi Street, Suite 3 • Hilo, Hawaii 96720
Phone (808) 961-8288 • Fax (808) 961-8742

February 24, 2009

All Aina Services
P.O. Box 291
Laupāhoehoe, Hawai'i 96764

Dear Sir/Madam:

SUBJECT: Additional Farm Dwelling Agreement (FDA-08-000238)
Applicant: All Aina Services
Land Owner: Albert Dierderiks and Violet Dierderiks
State Land Use: Agricultural
County Zoning: A-5a
Land Area: 3.7 Acres
Tax Map Key: (3) 4-5-010:013

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 the signatures of the applicants/landowners.
2. A farm plan or evidence of the applicants' 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:

FEB 26 2009

*Hand delivered by
Lanie 2:00pm*

- a. Ongoing agricultural activities include the following:
 - i. The activity involves a working farm for the propagation of bananas, macadamia nuts, citrus grove (orange, tangerine, lime and lemons) ti plants and an extensive vegetable garden;
 - ii. Approximately 44 hours per week are required for running the farm; and
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, Hawai'i 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 and the agreement to use the dwelling for agricultural or farm-related activity on the building site demonstrate that there is income producing agricultural activity.
4. In addition, the following agencies have submitted their comments as stated below:
 - a. Department of Water Supply (DWS): (memorandum dated February 9, 2009)

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

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 two additional dwellings, the installation of a separate 5/8-inch meter for each dwelling would normally be required in accordance with the Department's regulations. However, the Department's existing water system facilities cannot support additional water meters at this time. Extensive improvements and additions, which may include, but not be limited to, source, storage, booster pumps, transmission, and distribution facilities, would be required. Currently, sufficient funding is not available from the Department for such improvements and no time schedule is set.

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

Further, as the applicant indicates that there is existing and proposed agricultural activity within the subject parcel, a reduced pressure type backflow prevention assembly must be installed within five (5) feet of the existing meter on private property (if one does not already exist). The installation of the backflow prevention assembly must be inspected and approved by the Department before commencement of water service. A copy of the Department's backflow prevention handout will be sent to the applicant to help them understand this requirement.

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

b. Department of Health (DOH): (memorandum dated January 14, 2009)

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

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."

Decision:

In view of the above, your request to construct an **Additional Farm Dwelling** on the property is approved subject to the following conditions:

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 any other reviewing agencies/divisions listed on the Building Permit (BP) Application shall be adhered to.
4. The applicant is responsible for any State and Federal tax consequences due to the income produced from the farm activity.
5. Your AFDA has been approved based on ongoing agricultural activity as summarized previously in this letter.
6. The First Party shall allow the Second Party or its representative to inspect the farm upon reasonable prior notice.
7. This AFDA 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 BP for this additional farm dwelling on or before December 30, 2010 may cause the Director to initiate proceedings to invalidate the AFDA.

All Aina Services - Dierderiks
Page 5
February 25, 2009

Please feel free to contact Larry Nakayama of this office at 961-8288 should you have any further questions and/or concerns.

Sincerely,


TODD LEITHEAD
fBJ LEITHEAD TODD
Acting Deputy Planning Director

LN/JG:jg
O:\AFDA\AFDALHN\Approvals\AllAinaSvc-Dierderiks.doc

Enclosures: AFDA document
AFDA document instruction sheet

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

ADDITIONAL FARM DWELLING AGREEMENT

JAC THIS AGREEMENT made and executed this 24th day of February, 2009, by and between ~~DIEDERIKS~~ *JAC* ~~DIEDERIKS~~ **DIEDERIKS** AND ~~VIOLET DIERDERIKS~~ **VIOLET DIEDERIKS**, herein called the "First Party," whose mailing address is P.O. Box 754, Kamuela, Hawaii 96734, and the COUNTY OF HAWAII, herein called the "Second Party."

IT IS HEREBY AGREED that the First Party may construct a farm dwelling located on the property described by Tax Map Key (3) 4-5-010:013 situated within the State Land Use Agricultural district and zoned Agricultural (A-5a) 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:

APC 

ALBERT ~~DIEDERIKS~~, Legal Owner
DIEDERIKS

APC 

VIOLET ~~DIEDERIKS~~, Legal Owner
DIEDERIKS

SECOND PARTY:



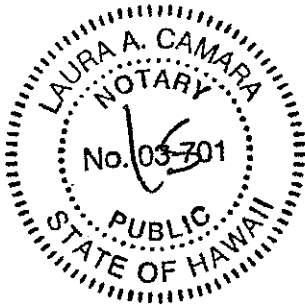
County of Hawaii Planning Department

STATE OF HAWAII)
) SS.
COUNTY OF HAWAII)

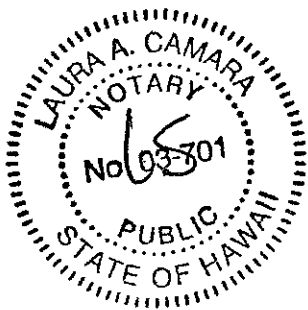
On this 6 day of March, 2009 before me personally appeared ~~ALBERT DIEDERIKS~~ ^{JAC DIEDERIKS} AND ~~VIOLET DIEDERIKS~~ ^{JAC DIEDERIKS} to me known to be the persons described in and who executed the foregoing instrument, and acknowledged that they executed the same as their free act and deed.

Laura A. Camara

Notary Public, State of HAWAII



My commission expires: 11/30/11



Doc. Date: 3/6/09 # Pages: 7

Notary Name: LAURA A. CAMARA 3 Circuit

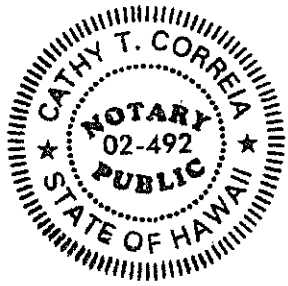
Doc. Description: Additional Farm

Dwelling Agreement

Laura A. Camara 3/6/09
Notary Signature Date

STATE OF HAWAI'I)
) SS.
COUNTY OF HAWAI'I)

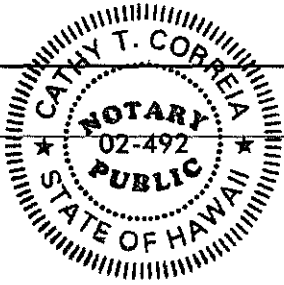
On MAR 12 2009, before me personally appeared BJ Leithead Todd, to me personally known, who, being by me duly sworn, did say that BJ Leithead Todd is the Planning Director of the County of Hawai'i, and that the Planning Department of the County of Hawaii has no corporate seal; and that the instrument was signed on behalf of the Planning Department of the County of Hawaii, a government agency, and said BJ Leithead Todd acknowledged the instrument to be the free act and deed of said Planning Department, County of Hawaii.

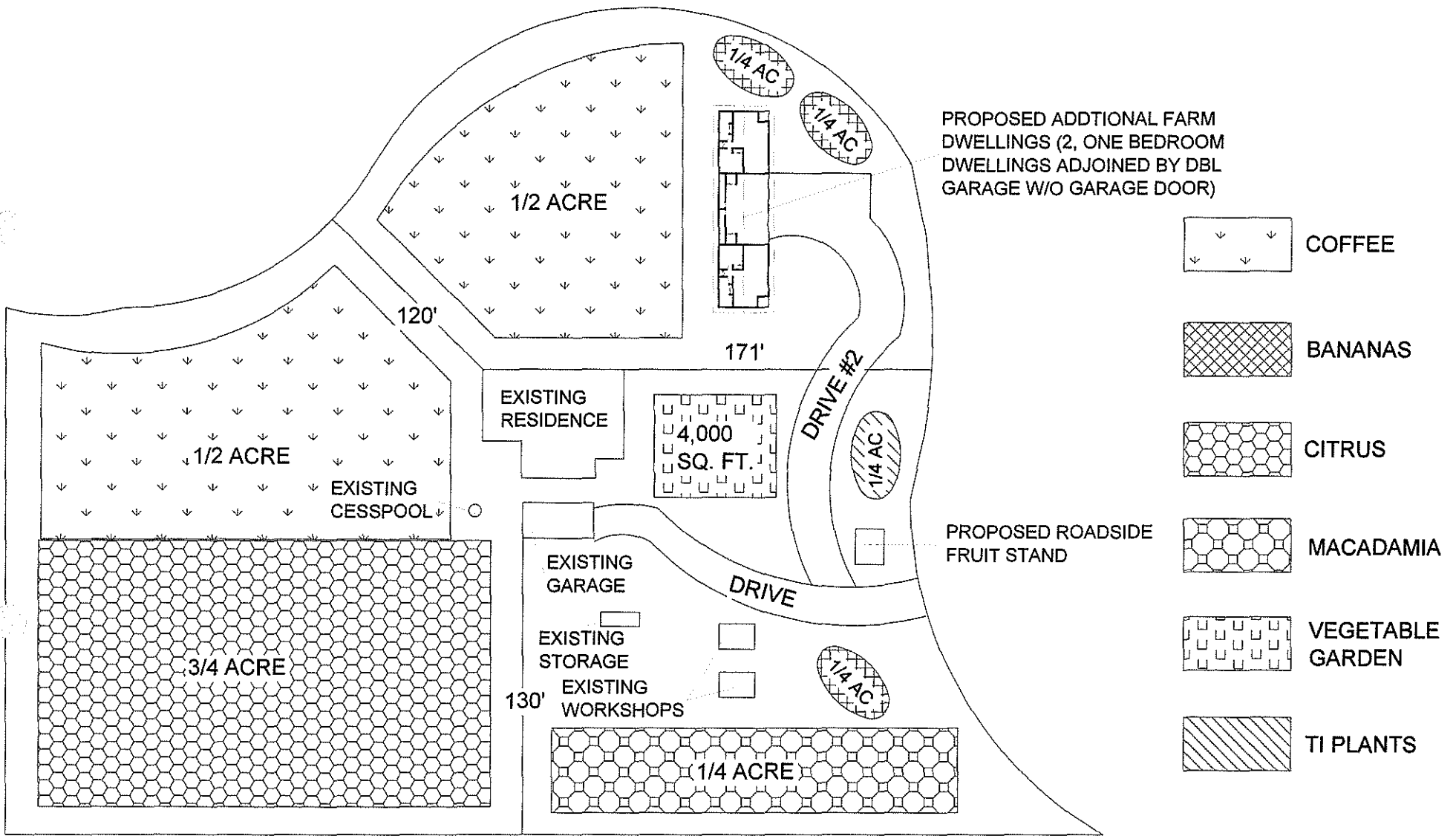




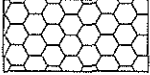
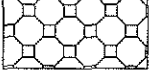

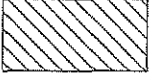
Cathy T. Correia
Cathy T. Correia
Notary Public, State of Hawai'i

My Commission Expires: 10-13-2010

Doc. Date: <u>February 24, 2009</u>	# Pages: <u>7</u>
Notary Name: Cathy T. Correia	Third Circuit
Doc. Description: <u>Additional Farm Dwelling Agreement</u>	
<i>Cathy T. Correia</i> Notary Signature	<u>MAR 12 2009</u> Date





-  COFFEE
-  BANANAS
-  CITRUS
-  MACADAMIA
-  VEGETABLE GARDEN
-  TI PLANTS

DIEDERIK'S FARM PLAN
SCALE 1" = 80'

TMK (3) 4-5-010:013

