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County of Hawai'i
PLANNING DEPARTMENT

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October 2, 2018

John M. Markley
P.O. Box 588
Holualoa, Hawaii 96725-0588

Dear Mr. Markley:

SUBJECT: Additional Farm Dwelling Agreement (FDA-18-000449)
Applicant(s): John M. Markley
Owner(s): John Micah Markley
State Land Use: Agricultural
County Zoning: Agricultural (A-5a)
Land Area: 3.300 acres
TMK: (3) 7-3-008:109 (COR-18-119894)

Pursuant to authority conferred to the Planning Director by Chapter 25 (Zoning), Article 5, Division 7, Section 25-5-77 of the Hawai'i County Code and Planning Department Rule 13, Farm Dwellings, we have reviewed your request for **one (1) additional farm dwelling** on the subject property and have **approved** your request subject to the following.

BACKGROUND INFORMATION

1. **Subject Property:** Being A Portion of Kaloko, North Kona, Island of Hawai'i, Hawai'i.
2. **Lot Size:** 3.300 Acres.
3. **State Land Use:** Agricultural (A).
4. **County Zoning:** A-5a.
5. **Proposed Request:** One Additional Farm Dwelling.
6. **Existing Structures:** There is a single-family dwelling, which was permitted in 2017.
7. **Building Permits:** There is a building permit of record in Real Property Tax Records.

8. **Farm Plan:** Includes the following existing and expanded income-producing agricultural activities.
 - a. **Existing agricultural activities include:**
 - i. There are approximately 3.1 acres of avocado trees.
9. **Evidence of Agricultural Activity:** There is evidence of agricultural income and expenses reported on their profit and loss statement submitted to the State Department of Taxation.
10. **Rationale for Establishing AFD:** To accommodate farm help.

FINDINGS

1. 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 HRS Chapter 205-4.5 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 06-5863) approved on February 7, 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 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 identified below:
 - a. Department of Water Supply (DWS) memo September 6, 2018.
 - b. Department of Health (DOH) email dated September 25, 2018.

DECISION AND CONDITIONS

In view of the above, your request to construct **one (1) Additional Farm Dwelling** on the property is **approved** subject to the following conditions:

1. Your AFDA has been approved based on existing and expanded agricultural activity as summarized in this letter.

2. The AFD shall be used for farm-related purposes and 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 additional farm dwelling.
3. An Additional Farm Dwelling Agreement affidavit shall be notarized and submitted to the Planning Department for recordation with the Bureau of Conveyances, State of Hawai'i, which states that the additional dwelling shall be used for farm-related purposes.
4. The farming enterprise shall be commercial in nature and up to seventy-five percent (75%) of your proposed farm plan shall be implemented within three (3) years from the AFDA approval date. The Planning Department shall be allowed to inspect the farm upon reasonable prior notice.
5. 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 signature(s) along with a check made out to the Bureau of Conveyances in the amount of **\$41.00** 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 sent for recordation by the Planning Department.

6. All other applicable rules, regulations, and requirements of the Planning Department (including but not limited to the Hawai'i County Code, Chapter 25, Zoning), 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.
7. The applicant is responsible for any State and Federal tax consequences due to the income produced from the farm activity.
8. The First Party (as identified in the Additional Farm Dwelling Agreement) shall allow the Second Party or its representative to inspect the farm upon reasonable prior notice.
9. DWS has noted that the subject parcel does not have a County approved water service at present, and an additional water service is not available for the additional dwelling.

10. This AFD shall be valid for a period of two (2) years from the date of this approval letter to secure a Building Permit (BP) for the AFD. Failure to secure a BP for this AFD on or before **October 1, 2020**, may cause the Director to initiate proceedings to invalidate the AFD.

11. 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.

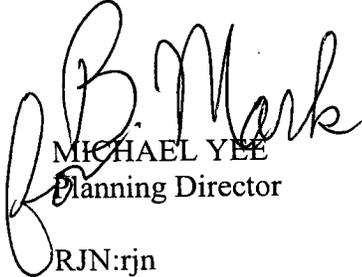
In reference to the Department of Water Supply's comment, we suggest the following:

- a. "Any existing and/or future dwellings not serviced by County water system constructed on the property shall have a minimum 6,000 gallon water storage facility for domestic consumption for water catchment. This catchment system shall 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. Provide a water supply system sufficient for fire fighting consisting of a minimum 3,000 gallons of water per existing and/or proposed future dwelling on the property meeting with the approval of the Hawaii County Fire Department. If dwellings are more than 50 feet apart, 4,000 gallons of water per dwelling will be required".

Please feel free to contact Rosalind Newlon of this office at (808) 323-4770 or email rosalind.newlon@hawaiicounty.gov should you have any further questions and/or concerns.

John M. Markley
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Sincerely,



MICHAEL YEE
Planning Director

RJN:rjn

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Enclosures: AFDA document
AFDA document instruction sheet

cc: Chief Sanitarian, DOH
Manager-Chief Engineer, DWS

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cc via email: GIS Section w/enclosures

Glenn Sako, Department of Research and Development (R&D)
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