



6. **Three Existing As-built Dwellings.** The Territory of Hawaii Field Book at the County of Hawaii Real Property Tax Division, notes that Building Permit #B781910 was issued to the subject property on July 17, 1978, for an existing as-built, unpermitted single-family dwelling (a nonresidential shed converted to a single-family dwelling). Pursuant to HRS Sec. 205-4.5(b), this as-built dwelling constitutes a Farm Dwelling on the subject parcel.

By the applicant's admission and the submitted site plan, there are two additional existing as-built, unpermitted single-family dwellings located on parcel 09.

The second dwelling constitutes the 1st Additional Farm Dwelling (AFDA), FDA-18-000444, approved on July 18, 2018. Presently, the landowner-applicant is in the process of revising and resubmitting residential plans for building permit review. Construction plans to install improvements for an accessory water tank and wastewater treatment system, that comply with the standards of the County Building Code, the State Department of Health, and the Hawaii County Zoning Code conditions for construction designed for human occupancy are required to legalize the second dwelling (1<sup>st</sup> AFDA).

The subject of this AFDA application is to address the third, as-built unpermitted dwelling. The proposed farm dwelling, FDA-18-000452 will constitute the 2nd AFDA on parcel 09. The landowner-applicant has been instructed to submit a revised site plan to show improvements for a future accessory residential water tank and wastewater treatment system to the third farm dwelling.

7. Subdivision No. 6415 approved on May 4, 1994, created parcel 9, Lot 37-A. This official land subdivision confirms that the subject property is a legal lot of record that came into existence after June 4, 1976. The subdivision was approved subject to a water variance. Variance No. 529 was approved on September 14, 1993. (**See Exhibit A**)
8. **Existing Agricultural Activity.** Although County of Hawaii Real Property Tax records doesn't confirm that current agricultural usage is being assessed, the Site Plan Description and Summary of the submitted Farm Plan Summary along with copies of farm related expense receipts, attests to the current existing farming on this lot for laying hens, sheep breeding, and food or fruit bearing trees.
9. **Proposed Request:** A 2nd AFDA for farming purposes only.
10. **Rationale for Establishing the Additional Farm Dwelling (AFD):** To provide housing on parcel 9 for farm labor.

The applicant-landowner purchased the parcel with existing crops. Since the purchase, the landowner has added to the existing farming activity. Approval of the AFD allows a second dwelling on parcel 9, to enable the landowner to "keep up with the demand of what this farm produces ...". The additional farm dwelling is housing for needed help for added farming workload. Furthermore, approval of the additional farm dwelling will enable the

existing second “as-built” unpermitted dwelling to apply for a county residential building permit process with the Department of Public Works – Building Division.

11. **Farm Plan Summary and Site Plan.** The Farm Site Plan depicts a farm for producing agriculture with approximately 4+ acres cultivated for macadamia nut (apx. 80 trees), avocado (6), citrus (8), kukui, bananas, and papayas. The submitted Farm Plan Summary also discusses and documents the applicant’s pursuit and investment costs to develop the parcel for Rhode Island Red - egg laying chickens, breeding chicks, and the breeding of Hair sheep with offspring.
  - A. **Year-1 Agricultural Activities.** The submitted Year-1 quarterly descriptions attests to the egg laying hens, sheep breeding, green house outside crops, and the food bearing trees.
  - B. **Evidence submitted for the existing farm operation in commercial agriculture.** Expenditure and investment costs for expenses spent on farm machine parts, farm equipment costs, feed for adult sheep, sheep collar, and additive costs, chicken feed, lay pellets for chicken feed, chicken feed growth and molting food, calcium food additive to chicken feed for raising chicks, greenhouse and garden supply costs, greenhouse seeds, soil supplementation and fertilizer enhancing products.

### FINDINGS

1. In the State Land Use Agricultural district, farm dwellings are permitted and required by the State law of HRS Sec. 205-4.5 (a)(4). Furthermore, any *additional* dwelling, is required to be a farm dwelling (or an additional farm dwelling), according to Hawaii County Code - Zoning Sec. 25-5-77 (b) and (c). According to HRS Sec. 205-4.5(b), residential single-family dwellings are permitted only on lots created *before* June 4, 1976, Therefore, lots classified in State Land Use Agricultural that were created *after* June 4, 1976, single-family dwellings are subject to the farm dwelling standards and requirements of the above and below State law and County Code sections.

In general, according to HRS Sec. 205-4.5(a)(4), a **farm dwelling means a single family dwelling located on and used in connection with a farm or where agricultural activity provides income to the family occupying the dwelling.** (Emphasis added). The farm dwelling definitions of Hawaii County Code Sec. 25-5-77(b) and 25-1-5(b) Zoning, and Planning Department Rule 13-3(b) are consistent with the State law definition.

2. County Planning Department records confirm that the subject property was created and approved after June 4, 1976, by Subdivision No. 6415 on May 4, 1994. The property is located and classified in the State Land Use Agricultural district. Therefore, according to the above cited State law of Sec. 205-4.5(b), 205-4.5 (a)(4), Hawaii County Code sections and Planning Department rule, these laws require all 3 dwellings on parcel 9, to be farm dwellings that complies with farm dwelling standards.

The completion of the County Planning Department Farm Dwelling Notice form is the administrative process that satisfies the requirement of the first dwelling as a Farm Dwelling. Additional Farm Dwelling, FDA-18-000444, is the second as-built dwelling that was approved on July 18, 2018. Its AFDA was recorded with the State of Hawaii, Bureau of Conveyances on September 10, 2018. The third dwelling is the subject of this application. The proposed 2nd Additional Farm Dwelling, FDA-18-000452, is an as-built, one-bedroom, single-family dwelling.

3. **Working Farm and Commercial Agriculture.** The documentation of expenditure and investment costs to pursue and realize the existing farm, the submitted farm plan, and the agreement to use the dwelling for farm-related agricultural activity are documentations that substantiate and demonstrate that the applicant's efforts are consistent with HRS Chapter 205, the State law that requires *a working farm or a farming operation*, as defined in HRS Sec. 165-2, the Hawaii Right to Farm Act.

In general, HRS Sec. 165-2 defines *a working farm or a farming operation* to mean "... a commercial agricultural facility or pursuit conducted in whole or in part ...; the planting, cultivating, harvesting, and processing of crops; ..." (emphasis added); and, as discussed above at Findings #1, HRS Sec. 205-4.5(a)(4) requires the agricultural activity to provide income to the family occupying the farm dwelling.

The state and county laws do not define the terms *commercial agriculture or farm and or pursuit*; however, the available general definition for *commercial farming or commercial agriculture* means a producer-farmer is farming *with the intent to sell* some or all of their agricultural production. In commercial farming, the agricultural harvest (in whatever form that takes) is for a commercial purpose: that means, the agricultural harvest *is produced with the purpose to sell it in the marketplace*.

In the context of the definition of *farming operation* or *working farm*, the term *pursuit* is administratively interpreted to include efforts, investment costs, and expenditures for an agricultural purpose that *pursue, or are in pursuit* to establish or maintain a commercial farm.

Therefore, the farming enterprise is required to be a *commercial working farm or farming operation*, as stated in HRS Chapters 205 and 165, the State laws that preempt this issue.

4. **County Water Variance No. 529, approved on September 14, 1993, and Approved Water Source System.** Parcel 9's creation by Subdivision No. 6415 was approved subject to the performance conditions, specifically, conditions c, d, and f. (See Exhibit A)

Further, the County of Hawaii Department of Water Supply (DWS) confirmed that the parcel currently receives county water meter service for one single-family dwelling. DWS also confirmed that the county water system serving this general area of Hamakua continues to have insufficient capacity to serve additional subdivided lots.

**Approved Water Source System and Wastewater System.** County of Hawaii Code Zoning Sec. 25-4-2 (a) (1) and (2), regulate conditions for construction of buildings designed for human occupancy, which includes additional farm dwellings. This Zoning Code standard requires two improvements for the additional farm dwellings. These standards require an approved water system to provide water to the subject building site. The water service can be delivered from the county water system or from a private or individual delivery system. The second standard requires a residential wastewater system approved by the State of Hawaii Department of Health.

### **DECISION AND CONDITIONS**

As a result of the above findings, your request to construct one (1) Additional Farm Dwelling is approved for the third farm dwelling, subject to the following conditions:

1. Your AFDA (or agreement) has been approved based on the existing and future agricultural activity as summarized in this letter and represented on the submitted Farm Plan Summary and other application materials.
2. The First Party, identified in the Additional Farm Dwelling Agreement, shall allow the Second Party, the Hawaii County Planning Department or its representative, to inspect the farm operation upon reasonable prior notice and at a mutually agreeable date and time.
3. 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 AFDA shall 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** (Regular System) in accordance with the enclosed AFDA Instructions.
4. The farming operation shall be commercial in nature and the Additional Farm Dwelling shall be used for commercial 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.
5. An Additional Farm Dwelling Agreement affidavit shall be notarized and submitted to the Planning Department for recordation with the State of Hawai'i, Bureau of Conveyances, which states that the additional dwelling shall be used for farm-related purposes.
6. **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.**
7. Compliance is required with all other applicable rules, regulations, and requirements of HRS Chapters 205 and 165, the County Planning Department (including but not limited to the

Steven A. Vujnovich  
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County of Hawai'i Code Chapter 25, Zoning), Department of Public Works, Department of Water Supply, Fire Department, the State of Hawaii Department of Health, and any other reviewing agencies/divisions listed on the Building Permit application.

8. For the construction of the proposed Additional Farm Dwelling, the applicant shall comply with all standards, specifications, conditions, and requirements of the county building permit application process, of the County Department of Water Supply, the State Department of Health, and the conditions for construction of buildings designed for human occupancy of Hawaii County Code Zoning Sec. 25-4-2 (a) (1) and (2).
9. **Water Variance No. 529.** A building permit application process for the additional farm dwelling shall incorporate the requirements of **performance conditions c, d, and f** of the above-discussed water variance.
10. The decision to approve the Additional Farm Dwelling shall be valid for a period of two (2) years from the date of this approval letter. Therefore, there is a two year period to secure a Building Permit (BP) for the AFD. Failure to secure a BP to construct the AFD on or before the two year period expires, may be cause for the Planning Director to initiate a process to rescind and invalidate the AFD approval.

Should any further questions or concerns arise, please contact staff Planner, Earl Lucero, at (808) 961-8160 or email [Earl.Lucero@hawaiicounty.gov](mailto:Earl.Lucero@hawaiicounty.gov).

Sincerely,



MICHAEL YEE  
Planning Director

EML:nci

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Enclosures: AFDA document  
AFDA document instruction sheet  
Exhibit A

cc: Chief Sanitarian, DOH  
Manager-Chief Engineer, DWS  
Lisa Miura, Administrator, Real Property Tax Office  
[Lisa.Miura@hawaiicounty.gov](mailto:Lisa.Miura@hawaiicounty.gov)

cc via email: GIS Section w/enclosures

VAR529

September 14, 1993

Mr. & Mrs. Bart Jones  
P. O. Box 363  
Honokaa, HI 96727

Dear Mr. & Mrs. Jones:

Variance Application (VAR 93-35)  
Petitioner: Bart and Cory Jones  
Request: Private Water Catchment System  
Tax Map Key: 4-4-11: 09

After reviewing your application and the information submitted in behalf of it, the Planning Director by this letter hereby certifies the approval of your variance request to allow the creation of a two (2) lot subdivision without a water system meeting the minimum water requirements of the County's Department of Water Supply as required by Article 6, Division 2, Section 23-84(1) of the Subdivision Control Code. The subject property consisting of 10.3 acres, is located approximately 3,000 feet southerly of the Old Kaapahu School at Kaapahu Homestead, Hamakua, Hawaii.

The approval of the variance request to allow the proposed subdivision without the minimum water requirements is based on the following:

Special and Unusual Circumstances

There are special and unusual circumstances that exist which would warrant or necessitate a waiver from the minimum water requirements to service the proposed two (2) lot subdivision. The Department of Water Supply stated, "The Department's existing water system facilities cannot support the proposed subdivision at this time. Extensive improvements and additions, including source, storage, transmission, booster pump, and distribution facilities, must be constructed. Currently, sufficient funding is not available and no time schedule is set."

**EXHIBIT**

A

CC248

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Therefore, considering there foregoing issues, we have determined that there are special and unusual circumstances applying to the subject property which exist either to a degree which deprives the applicant of substantial property rights that would otherwise be available or to a degree which obviously interfere with the best use or manner of development of the subject property.

#### Alternatives

There are no reasonable alternatives in resolving the required water system requirements. To bring County water to the property would not be economically feasible.

The other alternative would be to drill wells to create a private water system. However, due to the limited nature 2-lot) of the subdivision would also be coast prohibitive. Also there is no assurance that adequate water would be found.

As such, the imposition of providing a public or private water system would be putting excessive demands upon the applicant when a more reasonable alternative is available.

#### Intent and Purpose

The subject property consisting of 10.3 acres, is located within the County's Agricultural 5-acre (A-5a) zoned district. Under this zoning designation, the minimum building site area is five (5) acres. The applicant is proposing a two (2) lot subdivision each with an area of five (5) acres conforming to the minimum lot size of the Zoning Code.

The intent and purpose of requiring a water system in this case is to assure that adequate water is available for human consumption. In this case, the substitute roof catchment system, is considered adequate.

Based on the foregoing findings, this variance request would be consistent with the general purpose of the zoning district, the intent and purpose of the Zoning and Subdivision Control Codes and the County General Plan; and will not be materially detrimental to the public's welfare; and will not cause substantial adverse impact to the area's character and to adjoining properties.

The variance request is therefore approved, subject to the following conditions:



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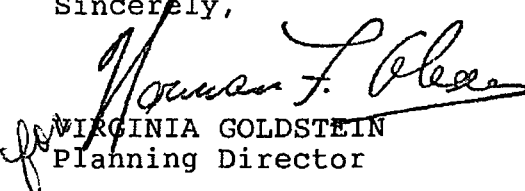
1. The applicant, his assigns or successors, shall be responsible for complying with all stated conditions of approval.
2. The applicant, his assigns or successors, shall file a written agreement with the Planning Department prior to receipt of final subdivision approval containing the following stipulations and covenants which shall be duly recorded at the Bureau of Conveyances of the State of Hawaii by the Department at the cost and expense of the subdivider:
  - a. The applicant/subdivider agrees and accepts the fact that a County dedicable public water system is not now or in the foreseeable future able to service the subdivision.
  - b. The applicant/subdivider agrees and accepts the fact that the County will not at any time bear the responsibility of supplying public water to the subdivision.
  - c. 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.
  - d. 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 spaced closer than 50 feet apart, 4,000 gallons of water per dwelling will be required.
  - e. In the event that there are any amendments or changes to the subdivision after the agreement is signed, the applicant/subdivider shall be responsible for informing the department of the amendments or changes so that the agreement can reflect the amendments or changes; further, the written agreement shall be considered as a

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condition and covenant running with the land and shall be binding upon the applicant/subdivider or owner, his successors and assigns, and shall be incorporated as an exhibit and made part of each agreement of sale, deed, lease or other similar documents affecting the title or ownership of each subdivided lot.

- f. In the event that any of the lots are provided by a water service (individual meter) from the Department of Water Supply or an approved private water system, the above covenants for the specific property will no longer be in effect.
- g. Comply with all other applicable State and County rules and regulations.

Sincerely,

  
VIRGINIA GOLDSTEIN  
Planning Director

EC:mjh  
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xc: Fire Department  
Department of Water Supply  
Subdivision No. 93-64