

6. **Three Existing As-built Dwellings.** According to an admission by the landowner-applicant, there are 3 existing dwellings located on the subject property. Prepared by a Hawaii licensed land surveyor, documentations from the approved County Subdivision Final Plat Map (SUB-10-001026, revised January 17, 2017), confirm three 'houses' on the subject property.

First Dwelling. Planning Department subdivision records and the Hawaii County Tax Map Key history sheets confirm that the subject parcel originated from TMK: 4-2-008: parcel 007, Lot 19-B. Furthermore, the Territory of Hawaii Field Book for TMK: 4-2-008:007, from the County of Hawaii Real Property Tax Division archive records, documents a history of tax assessments on the existing first dwelling since 1944, and is identified as 'the ranch house' in the assessment record. The archive record, however, does not document a building permit (BP) history record on the first dwelling.

According to the foregoing findings, the first dwelling (the ranch house), appears to be an unpermitted, as-built dwelling with improvements or additions.

Second & Third As-built Dwellings. In 2012, according to Hawaii County Real Property Tax and Building Permit (BP) records, 2 unpermitted, two-level, as-built structures were permitted as additions to the existing ranch house. A building (major floor area: 678 square feet; accessory floor area: 204 square feet), was approved for a detached bedroom, 50-feet from the existing first dwelling. A larger building (major floor area: 1041 sq. ft., accessory floor area: 1321 sq. ft.) was approved for a rec room – storage, 33-feet from the existing first dwelling.

According to the landowner-applicant and the approved final subdivision plat map, both buildings currently has as-built kitchen improvements that were converted to as-built, detached single-family dwellings.

7. **Legal Lot of Record Subject to Farm Dwelling Standards.** County of Hawaii Subdivision No. SUB-10-001026-Revised, which was approved on January 17, 2012, officially created the existing configuration of the subject property. Therefore, this land subdivision confirms that the subject property is a legal lot of record that came into existence after June 4, 1976.

According to State law HRS Sec. 205-4.5 (b), lots created after June 4, 1976, are subject to the farm dwelling standards of Sec. 205-4.5 (a)(4). The post-1976 legal lot of record status requires all dwellings constructed on the subject property to comply with and fulfill the farm dwelling standards of Sec. 205-4.5 (a)(4).

Therefore, to fulfill the farm dwelling requirements of Sec. 205-4.5 (a)(4), the first dwelling and this AFD application (to permit a second dwelling), require both houses to be farm dwellings.

The creation of the subject property was pursuant to Subdivision Code Sec. 23-7, a consolidation-resubdivision action to repartition existing lots. Repartitioning of these existing lots did not create new, additional legal lots of record. Furthermore, it was also determined that necessary improvements to further the public's safety and welfare were not required. Pursuant to Sec. 23-7, subdivision code improvement standards did not apply to this consolidation-resubdivision action. Additionally, road, water or other variances were not required of the land subdivision that created this subject property.

8. **Existing Agricultural Activity.** County of Hawaii Real Property Tax records does not confirm that current agricultural usage is being assessed. However, per the submitted Dolan Farm Plan 2018, the list of current use and income, \$1100.00 income from sheep, the site plan description, and copies of farm related expense receipts, attest to the current existing farming of sheep, horses, two greenhouses, startup test crops for blueberries, asparagus, lime and lemon trees on this lot.
9. **Proposed Request: Second Unpermitted As-built Dwelling Applying for AFDA Approval.** The subject of this AFDA application (FDA-18-000453) is to address the smaller, second unpermitted, as-built dwelling. This will constitute as the 1st AFDA on the subject property.

Note, according to the landowner-applicant, the third as-built dwelling conversion will be the subject of a future AFDA application.

10. **Rationale for Establishing the Additional Farm Dwelling (AFD).** Primary reason for the AFD is to provide housing for a caretaker (and his family) doing farm labor on the subject property.

The subject property is in a mauka location that is remote and rainy. In addition, the scale of the ranch and farm work required of a 29+ acre agricultural lot, requires the landowner to offer the pragmatic convenience of on-site housing. Providing on-site housing attracts farm laborers to reside and complete the ranch and farm work generated on this property.

Furthermore, the approval of the AFD will enable the landowner-applicant to legalize the existing second "as-built" unpermitted dwelling. It will allow the landowner to initiate the application process with the Department of Public Works (DPW) – Building Division for a county residential building permit.

9. **Farm Plan Summary and Site Plan.** Generally, the farm site plan depicts area sections for producing agriculture:
 - a. Approximately 2 acres for forest and future pasture;

- b. 7 acres forest and future pasture;
- c. 6 acres for maile, forest, and sheep pasture;
- d. 7 acres for horses;
- e. 1 acre for small 10' x 20' greenhouse to start seeds, grow herbs, lettuce, and tomatoes, caretaker's cottage;
- f. 3 acres for forest and pasture;
- g. 2 acres for sheep pasture, possible area for berries or mamaki, native trees and plants;
- h. ½ acre for a large 30'x50' greenhouse, 16.5 K gallon water catchment tank, water filtration system and test crop area for blueberries and asparagus.

Evidence submitted for the existing farm operation in commercial agriculture. Copies of receipts and cancelled checks for expenditure and investment costs include expenses spent on farm machine parts, farm equipment costs, weedblock, labor materials for construction of the greenhouses, soil amendments and fertilizers, greenhouse cover, insect proof screen material, Hawaii Cooperative Extension Service agricultural analysis, feed for adult sheep, sheep collar, and additive costs, greenhouse and garden supply costs, greenhouse seeds, soil supplementation and fertilizer enhancing products, plant costs for decorative ornamentals, blueberries, Tahitian lime, and Meyer lemon.

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, require single-family dwellings to fulfill the farm dwelling standards and requirements of the 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 Zoning Sec. 25-5-77(b) and 25-1-5(b), 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 SUB-10-001026-Revised on January 17, 2012, and the

property is located and classified in the State Land Use Agricultural district. Therefore, according to the cited State law of Sec. 205-4.5(b), 205-4.5 (a)(4), Hawaii County Code Zoning sections and Planning Department rule, these laws require *all dwellings on the subject property to be farm dwellings* that comply with farm dwelling standards.

The completion of the County Planning Department Farm Dwelling Notice form is the administrative process that will satisfy the Farm Dwelling requirement of the first dwelling, the ranch house.

The subject of the current application for an Additional Farm Dwelling, FDA-18-000453, is for the second, as-built dwelling (678 square feet major floor area).

According to the landowner-applicant, the third, as-built dwelling conversion will be the subject of a future AFDA application.

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 landowner-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, in the above 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 which 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. **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 AFD. This Zoning Code standard requires two improvements for the AFD:

- a. 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.
- b. 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 second 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 permit the Second Party, the Hawaii County Planning Department or its representative, to conduct a site inspection of 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 AFD. 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.**

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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 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 AFD, the applicant shall comply with all standards, specifications, conditions, and requirements of the county building permit application process, the State Department of Health, and the code standards that state the conditions for construction of buildings, designed for human occupancy of Hawaii County Code, Zoning Sec. 25-4-2 (a) (1) and (2).
9. 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.

Sincerely,



MICHAEL YEE
Planning Director

EML:nci

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Enclosures: AFDA document
AFDA document instruction sheet

cc: Chief Sanitarian, DOH
Lisa Miura, Administrator, Real Property Tax Office
Lisa.Miura@hawaiicounty.gov

cc via email: GIS Section w/enclosures

Additional Farm Dwelling Agreement Instructions

Attached is the Additional Farm Dwelling Agreement form for your approved application. It is important that you follow these instructions in the completion of the form. Failure to complete and submit a properly completed agreement form to the Planning Department for recordation with the Bureau of Conveyances may cause your Additional Farm Dwelling Agreement to be rejected by the Bureau and delay approval of your application for a building permit for the additional farm dwelling. Building permit applications for additional farm dwellings will not be approved by the Planning Department until the AFDA form and the required submittals specified below have been returned to the Planning Department. You may make as many copies of the AFDA document for your records as necessary. A copy of the final recordation page will be available from the Planning Department when received back from the Bureau of Conveyances upon request.

1. All persons in the "First Party" must sign before a Public Notary in the appropriate location on the signature page (Page 5). Photocopies of this page may be made and sent to any persons listed on the page whose notarized signatures are required and then attached to the agreement document along with the original signature page. Facsimiles or FAX copies of signatures will not be accepted.

Note: All signatures must be the same as the typed name. Therefore, if John L. Doe is the name typed the signature must also be John L. Doe. Signing John Doe or Jonathan L. Doe will cause the agreement document to be rejected by the Bureau of Conveyances for recordation purposes.

2. The date on page 2 will be filled in when the agreement is signed by the Planning Director; please leave it blank.
3. Enclose a check or money order in the amount of \$41.00, made payable to the Bureau of Conveyances, for the recordation fee.
4. Return the **original** completed AFDA document with all required signatures and the recordation fee payment to the Planning Department for the Director's signature and submittal to the Bureau of Conveyances for recordation.

AFTER RECORDATION, RETURN BY MAIL TO:

County of Hawai'i Planning Department
101 Pauahi Street, Suite 3
Hilo, Hawai'i 96720

TITLE OF DOCUMENT:

ADDITIONAL FARM DWELLING AGREEMENT (FDA-18-000453)

PARTIES TO DOCUMENT:

**FIRST PARTY: TIMOTHY J. DOLAN
 TERRI J. DOLAN**

SECOND PARTY: COUNTY OF HAWAI'I

PROPERTY DESCRIPTION:

Lot 19-B-1 being a portion of Grant 4279,
Kaapahu Homesteads, Kaapahu, Hamakua,
Hawai'i Island

TMK: (3) 4-2-008: 040

ADDITIONAL FARM DWELLING AGREEMENT

THIS AGREEMENT made and executed this ___ day of _____, 2018, by and between **TIMOTHY J. DOLAN and TERRI J. DOLAN**, herein called the "First Party," whose mailing address is P.O. Box188, PAAUILO, HI 96776-0188; and, the **COUNTY OF HAWAI'I**, herein called the "Second Party."

IT IS HEREBY AGREED that the First Party may construct one additional farm dwelling (note: the additional farm dwelling of this agreement is the approved additional farm dwelling; and, in chronological and numerical order, the additional farm dwelling is also the second farm dwelling) located on the real property of Lot 19-B-1. The property Lot 19-B-1 is described as of Umikoa Village being a portion of Royal Patent 4527, Mahele Award 26-B to Kailakanoa, Koholalele, Hamakua, Island of Hawaii, containing 29.416 acres, **Tax Map Key (3) 4-2-008:040**, situated in the State Land Use Agricultural district and zoned Agricultural (A-40a) by the Second Party.

IT IS HEREBY ACKNOWLEDGED that the First Party FEE OWNER is the legal owner of the property described above.

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 dwellings 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 this agreement shall run with the land and apply to a lessee or tenant of the lot or of any portion of Lot 19-B-1.

IT IS HEREBY FURTHER AGREED that should the pertinent provisions of the State and County laws, 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, for the property, Lot 19-B-1, situated within the State Land Use Agricultural district, any land use and zoning violations that is determined by the Second Party to be caused by the First Party, a LESSEE or a TENANT, the Second Party may impose fines in violation of Hawaii Revised Statutes section 205-4.5. 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 a first violation; for any additional violation, there shall be a fine of not more than \$5,000. The Second Party may also impose fines for any violation of Hawaii County Code Chapter 25, as amended, according to the procedures and fine schedule of Hawaii County Code – Zoning Code sections 25-2-30 through -2-36.

IN CONSIDERATION OF THE AFORESAID, the Second Party hereby approves this Agreement to be in conformity with Hawai'i Revised Statutes sections 205-2 and 205-4.5, consistent with the permitted uses of the State Land Use Agricultural district. This Agreement also conforms to Hawai'i County Code Chapter 25, as amended.

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

FIRST PARTY:

TIMOTHY J. DOLAN, Fee Owner-Landowner

TERRI J. DOLAN, Fee Owner-Landowner
Tenants by the Entirety

SECOND PARTY:

MICHAEL YEE, Planning Director
County of Hawai'i Planning Department

STATE OF HAWAII)
) SS.
COUNTY OF HAWAII)

On this _____ day of _____, 2018 before me personally appeared TIMOTHY J. DOLAN, Fee Owner, and TERRI J. DOLAN, Fee Owner, Tenants by the Entirety, to me known to be the persons described herein and who executed the foregoing instrument, and acknowledged that he and she executed the same as their individual free act and deed.

Notary Public, State of Hawaii

My commission expires: _____