

Background Report # 4 and 5, above, confirms that the subject property, TMK: (3) 2-4-006: parcel 094, Lot D, is classified in State Land Use Agricultural and that the County zoning classification is A-3a (or County Agricultural-3 acres). Parcel 94 is, therefore, designated for agricultural land use as defined by the State Land Use law and the Hawai'i County Zoning Code classification.

6. **Existing Buildings on parcel 94, Lot D: County Real Property Tax (RPT) Records & County Dept. of Public Works (DPW) - Building Division Records.**

RPT's Online Parcel Information on parcel 94 confirm the real property tax assessment of two residential dwellings, identified as Buildings No. 1 and No. 2:

Building 1. In 1979, the first dwelling was built (Building Permit [BP] #: 782977) (1 bedroom [BR]; 396 sq. ft.); therefore, Building 1 is the 1979 first dwelling.

Building 2. In 2014, one single-family dwelling was built and identified as Building 2 by RPT; it is the second dwelling on the parcel (Building Permit [BP] #: B2014-00729 [2014]) (3 BRs; 1,177 sq. ft.). Building 2 is the 2014 existing first dwelling.

Building 1 & 2: RPT's Tax Assessment & Homeowner's Exemption.

Building 1: In 2019, RPT assessed it as a taxable dwelling improvement, valued at \$57,800.00;

Building 2 is also assessed as a taxable dwelling improvement.

Additionally, parcel 94, also currently receives an RPT homeowner's exemption; the exemption is noted because it applies to the entire property and, therefore, benefits both dwellings, Building 1 and 2.

Building 1 - 1979 First Dwelling: County DPW – Building Division & Demolition Permit (BP#: BH2014-00728) (open permit); and, Conversion to Ag & Personal Storage Shed.

According to Mr. Carey, the landowner-applicant, Building 1 sustained fire damage: the fire damage reduced the gross floor area from 396 sq. ft. to 376 sq. ft.; plumbing and kitchen improvements are removed; the electrical system is de-energized; a deteriorated leaking roof; and generally, damaged floor and wall sections are not intact and expose the interior to the bare ground or the weather. Mr. Carey supplied copies of photos of the remaining structure and these images are a part of the public record of the subject parcel's TMK file. As a result, the landowner-applicant, explained that the structural damage and deterioration made it uneconomical to invest in and decided not to rebuild it.

In 2014, Mr. Carey applied for the above-referenced demolition permit and DPW - Building Division issued the demolition permit for removal of the damaged Building 1.

Fire Damaged 1979 First Dwelling Converted to Ag & Personal Storage Shed. Although the 2014 demolition permit remains open, Mr. Carey explained he chose to not demolish the structure and converted Building 1 into an unenclosed ag and personal storage shed.

According to DPW-Building Division, because the conversion complies with County Building Code sec. 5-19.1, a county building permit is not required for the conversion of Building 1 from a dwelling to an ag and personal storage shed.

No Official Record of Conversion from Residential to Nonresidential Use for RPT. However, since a building permit is not required by DPW-Building Division, there is also no county record to officially inform RPT of the structure's conversion from residential dwelling to nonresidential use for ag and personal storage shed.

RPT has not re-assessed Building 1 to record its change in use from dwelling to ag and personal storage shed. Despite the structural fire damage, the structure continues to be assessed by RPT as a taxable dwelling simultaneously also receiving the benefit of the homeowner's exemption.

According to Mr. Carey, he has chosen to not cancel the open county demolition permit; instead, he is holding on to the open demolition permit to use later (per discussion with Mr. Carey [November 4, 2019]).

Action by Landowner-applicant to Correct RPT Assessment of Fire Damaged 1979 First Dwelling to Nonresidential Ag & Personal Storage Shed or its Demolition. In a follow-up Letter from Richard T. Carey (September 28, 2019), Mr. Carey states that once the additional farm dwelling (AFD) is built, the stored items of the shed will be relocated to the AFD; the ag personal storage shed will be stripped down and the county Real Property Tax assessor of parcel 94, Lot D will be requested to re-assess the shed's tax assessment classification. Real property tax records will be updated on the status of Building 1 as a personal storage shed or Mr. Carey represented that he will have it demolished.

7. **First Farm Dwelling Standards & the Status of Building 2.** Since Building 2 on this parcel was built after June 4, 1976, it is subject to the statutory requirements of HRS sec. 205-4.5 (b). Pursuant to this State law, all single-family dwellings constructed on parcel 94 after June 4, 1976, are subject to the farm dwellings standards of sec. 205-4.5 (a)(4) with County Planning Department Rule 13-4 (a)(1) – addressing construction of the first farm dwelling and requiring a Farm Dwelling Notice to the landowner.

On parcel 94, Building 1 has been converted to an ag and personal storage shed; it will either be demolished under the demolition permit, or for assessment purposes, reclassified by RPT from a residential dwelling to a nonresidential shed. Building 2 is now the first dwelling and the first farm dwelling. For the first farm dwelling, the Planning Department's

above-cited rule requires the landowner, Mr. Carey, to execute the First Farm Dwelling Notice for the 2014 existing first dwelling – first farm dwelling.

Note: In 2014, the 1979 fire-damaged first dwelling (Building 1) was replaced by the 2014 single-family dwelling (BP #: BH2014-00729 [May 13, 2014]); the 2014 dwelling is now the only dwelling on parcel 94, Lot D.

8. **Legal Lot of Record. Subdivision No. 3350 (approved: January 23, 1974)**, was the land subdivision action that officially created the above-referenced TMK parcel, identified as Lot D. The subdivision's January 1974 official date of approval confirms that parcel 94 is a legal lot of record that came into existence before June 4, 1976.
9. **The Proposed Additional Farm Dwelling is the Second Dwelling and the Second Farm Dwelling.** For parcel 94, the landowner's application is for one additional Farm Dwelling (AFD); and, according to above-discussed State laws, the proposed AFD on parcel 94 will result and be the second dwelling permitted on this lot. After June 4, 1976, all single-family dwellings constructed on parcel 94 will require an application for an AFDA (Additional Farm Dwelling Agreement), and if approved, these dwellings are subject to comply with and fulfill the farm dwelling standards of HRS sec. 205-4.5 (a)(4).

Parcel 94's Agricultural State Land Use and County Zoning allows the landowner to apply for an AFDA. Approval of the requested AFD will permit a second single-family dwelling on parcel 94; the second dwelling will also be the second farm dwelling.

10. **Agricultural Usage.** According to the County of Hawai'i Real Property Tax Division's online 'Agricultural Use Indicator,' it confirms that parcel 94 is not yet assessed and reported in agricultural usage, according to the subject parcel's acres in production, agricultural soil type, and the parcel's agricultural value. The landowner-applicant, Mr. Carey, will request RPT for a follow-up re-evaluation and re-assessment on the property's agricultural usage. This request is to be made at a later date to update the parcel's real property tax assessment classification.

Although the County Real Property Tax Division's assessment is helpful and would have supported parcel 94's AFDA application – it is not conclusive.

The submitted application's attachment, the 'Farm Plan Summary' of current agricultural usage, the site plan details of current agricultural land use, the narrative discussion on current farming efforts substantiated with copies of receipts for farm related expenses and investment costs, attests to the existing ongoing effort on parcel 94 of startup farming for commercial cacao farm production.

11. **Rationale for Establishing the Additional Farm Dwelling (AFD):** To provide the additional farm dwelling on parcel 94 for housing of the landowner's daughter and her partner.

The landowner-applicant, Mr. Carey and his wife live on parcel 94 but have age and health related limitations that require the live-in assistance and help of their daughter and her partner. Her assistance is needed to support and maintain parcel 94's startup development of the commercial cacao farm operations.

12. **Farm Plan Summary and Site Plan.** The Farm Site Plan of parcel 94 represents a 3.003-acre lot with approximately just less than one acre planted with 70 cacao trees for commercial cacao farm production.

- A. **Evidence submitted for the existing startup farming to develop a commercial cacao farm operation:** Copies of receipts were submitted to document expenditure and investment costs spent on a range of expenses: for farm fertilizer, farm equipment or tools, cinder soil medium, cacao tree plants, and machine ground work for tree plantings.

FINDINGS

1. **Farm Dwellings & Additional Farm Dwellings.** In the State Land Use Agricultural District, farm dwellings are 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 Hawai'i County Zoning Code sec. 25-5-77 (b) and (c).

The State law of HRS sec. 205-4.5(b) permits residential (non-farm) single-family dwellings only on lots created before June 4, 1976. Therefore, after June 4, 1976, lots created and classified in State Land Use Agricultural and single-family dwelling construction are subject to the requirement to fulfill the farm dwelling standards of sec. 205-4.5 (a)(4). The State law and County Code sections on farm dwelling standards are discussed below.

Farm Dwelling Standard. 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 Hawai'i 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. **Farm Dwelling Requirements: For Building 2 & the Request for the Proposed AFD.** County Planning Department records confirm that parcel 94 was officially created before June 4, 1976, by Subdivision No. 3350 (approved: January 23, 1974). Background Report #4, stated above, confirms that this property is located and classified in the State Land Use Agricultural District.

However, on parcel 94, Building 2 was constructed after June 4, 1976, to replace the fire damaged Building 1, which is subject to a County demolition permit. Therefore, according to the above-cited State law of sections (secs.) 205-4.5(b), 205-4.5 (a)(4), the Hawai'i County Code sections and Planning Department Rule, these laws require Building 2 and the requested proposed AFD to be farm dwellings that comply with and fulfill the above-discussed farm dwelling standards.

The completion of the County Planning Department form, the Farm Dwelling Notice, is the administrative process to satisfy the Farm Dwelling requirement of the first dwelling. The applicant's proposed second dwelling is subject to the application and processing for an Additional Farm Dwelling Agreement (AFDA).

3. **Working Farm and Commercial Agriculture.** The documentation of expenditure and investment costs to pursue and realize the existing startup commercial cacao farm, the submitted farm plan, and the agreement to use the dwelling for commercial agriculture document and substantiate 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 Hawai'i 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). Additionally, 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. **Approved Water Source System and Wastewater System.** County of Hawai'i 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:

The first standard requires an approved water system to provide water to the subject building site; and, 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 Hawai'i Department of Health.

Please note that these two improvements for the additional farm dwelling requires compliance with the construction standards of the County building permit application process.

DECISION AND CONDITIONS

As a result of the above-findings and background report, 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 commercial agricultural activity or pursuit as summarized in this letter and represented on the submitted Farm Plan Summary and other application materials.
2. **Right to Inspect.** The First Party, identified in the Additional Farm Dwelling Agreement, shall allow the Second Party, the Hawai'i County Planning Department or its representative, the right 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. Haw. County Zoning Code sec. 25-2-10 and Haw. County Planning Department Rule 13-8 (d)(2).
4. **The enclosed AFDA** shall be returned to the Planning Department with the appropriate notarized signature(s) **along with a check made out to the State of Hawai'i Bureau of Conveyances in the amount of \$41.00** (Regular System) in accordance with the enclosed **AFDA Instructions**.
5. **The farming operation** shall be for **commercial agriculture** 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. Haw. County Planning Department Rule 13-8 (d)(1).
6. 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. Haw. County Planning Department Rule 13-8 (d)(3).

7. **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.** Planning Department Rule 13-8 (d)(3).
8. **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 Hawai'i Department of Health, and any other reviewing agencies/divisions listed on the County Building Permit application.
9. **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 of Hawai'i Department of Health, and the conditions for construction of buildings designed for human occupancy of Hawai'i County Zoning Code sec. 25-4-2 (a) (1) and (2).
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. Haw. County Zoning Code sec. 25-2-7.
11. **Farm Dwelling Notice & the 2014 Existing First Dwelling.** The landowner-applicant, Richard T. Carey, Sr., shall be provided a Farm Dwelling Notice to execute for the 2014 existing first dwelling on parcel 94, Lot D. The original signed notice shall be returned to the Planning Department with a copy provided to the landowner-applicant.
12. **Real Property Tax Division Assessment Reclassification of Converted Ag and Personal Storage Shed (the former 1979 fire-damaged dwelling).**
Upon the completed construction or occupancy of the approved Additional Farm Dwelling, the landowner-applicant shall notify the County RPT Division to have the ag and personal storage shed reassessed and reclassified from a residential dwelling to a nonresidential shed.

In the alternative, should the landowner-applicant of parcel 94, Lot D, demolish the ag and personal storage shed – he shall provide written notification to the Planning Department and the RPT Division that the ag and personal storage shed has been demolished.

Mr. Richard T. Carey, Sr.
November 15, 2019
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Should any further questions or concerns arise, please feel free to contact staff planner, Earl Lucero, at (808) 961-8160, or via email at Earl.Lucero@hawaiicounty.gov.

Sincerely,


MICHAEL YEE
Planning Director

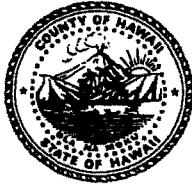
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Enclosures: Farm Dwelling Notice form
AFDA document
AFDA document instruction sheet
Exhibit A: Planning Director's Approval Letter of AFD dated November 15, 2019

cc: Manager-Chief Engineer, Haw. County Dept. of Water Supply

cc via email: GIS Section w/enclosures
Lisa Miura, Administrator, Haw. County Real Property Tax Division



County of Hawai'i Planning Department

www.cohplanningdept.com · planning@co.hawaii.hi.us

East Hawai'i Office · 101 Pauahi Street, Suite 3 · Hilo, Hawai'i 96720
Phone (808) 961-8288 · Fax (808) 961-8742

West Hawai'i Office · 74-5044 Ane Keohokalole Hwy · Kailua-Kona, Hawai'i 96740
Phone (808) 323-4770 · Fax (808) 327-3563

FARM DWELLING NOTICE

To: Owners of dwellings on land in State Land Use Agricultural districts.

This is to inform you that Chapter 205, Hawaii Revised Statutes, does not authorize residential dwellings as a permissible use in the State Land Use Agricultural district, unless the dwelling is related to an agricultural activity or is a "farm dwelling."

Farm dwelling is defined in Section 205-4.5(a)(4) as "a single family dwelling located on and used in conjunction 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."

Penalty for violation of Section 205-4.5, Hawaii Revised Statutes, is a fine of not more than \$5,000. If any person who is cited for a violation of the law fails to remove the violation within six months of such citation and the violation continues, such person is subject to a citation for a new and separate violation. There shall be a fine of not more than \$5,000 for any additional violation.

I acknowledge that I have read the above and have been given a copy.

Witness's Name (please print)

Land Owner's Name (please print)

Signature of Witness

Land Owner's Signature

Date: _____

Tax Map Key: 2-4-006:94

P:\Forms & References\E-Forms\2014 Updated Forms\First Farm Dwelling Notice.doc
Revised 2/18/14

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-19-000468)

PARTIES TO DOCUMENT:

FIRST PARTY: RICHARD T. CAREY, SR.

SECOND PARTY: COUNTY OF HAWAI'I

PROPERTY DESCRIPTION:

Lot D, Alawaena Highlands, Being a
Subdivision of Lot 1013 Grant 8908,
Waiākea Homesteads 2d Series,
at Waiākea, S. Hilo, Hawai'i Island

TMK: (3) 2-4-006:094

ADDITIONAL FARM DWELLING AGREEMENT

THIS AGREEMENT made and executed this ___ day of _____, 2019, by and between RICHARD T. CAREY, SR. herein called the "First Party," whose mailing address is 1462 Kalote Place, Hilo, HI 96720-3517; 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 second additional farm dwelling; and, in chronological and numerical order, the second additional farm dwelling is also the second single-family dwelling) located on the real property of Lot D. The property Lot D is described as a portion of Alawaena Highlands (formerly Nani O Waiākea Estates) being a subdivision of Lot 1013 Grant 8908, Waiākea Homesteads 2nd Series, at Waiākea, S. Hilo, Island of Hawai'i, containing 3.003 acres, **Tax Map Key (3) 2-4-006:094**, situated in the State Land Use Agricultural district and county zoned Agricultural (A-3a) 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 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 this agreement shall run with the land and apply to a lessee or tenant of the lot or of any portion of Lot D.

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 D, 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 Hawai'i 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 Hawai'i County Code Chapter 25, as amended, according to the procedures and fine schedule of Hawai'i 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:

RICHARD T. CAREY, SR., Landowner

SECOND PARTY:

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

STATE OF HAWAII)
) SS.
COUNTY OF HAWAII)

On this _____ day of _____, 2019, before me personally appeared RICHARD T. CAREY, SR., known to me to be the person described herein and who executed the foregoing instrument, and acknowledged that he executed the same as his free act and deed.

Notary Public, State of Hawaii

My commission expires: _____

Background Report # 4 and 5, above, confirms that the subject property, TMK: (3) 2-4-006: parcel 094, Lot D, is classified in State Land Use Agricultural and that the County zoning classification is A-3a (or County Agricultural-3 acres). Parcel 94 is, therefore, designated for agricultural land use as defined by the State Land Use law and the Hawai'i County Zoning Code classification.

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Building 1: In 2019, RPT assessed it as a taxable dwelling improvement, valued at \$57,800.00;

Building 2 is also assessed as a taxable dwelling improvement.

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8. **Legal Lot of Record. Subdivision No. 3350 (approved: January 23, 1974)**, was the land subdivision action that officially created the above-referenced TMK parcel, identified as Lot D. The subdivision's January 1974 official date of approval confirms that parcel 94 is a legal lot of record that came into existence before June 4, 1976.
9. **The Proposed Additional Farm Dwelling is the Second Dwelling and the Second Farm Dwelling.** For parcel 94, the landowner's application is for one additional Farm Dwelling (AFD); and, according to above-discussed State laws, the proposed AFD on parcel 94 will result and be the second dwelling permitted on this lot. After June 4, 1976, all single-family dwellings constructed on parcel 94 will require an application for an AFDA (Additional Farm Dwelling Agreement), and if approved, these dwellings are subject to comply with and fulfill the farm dwelling standards of HRS sec. 205-4.5 (a)(4).

Parcel 94's Agricultural State Land Use and County Zoning allows the landowner to apply for an AFDA. Approval of the requested AFD will permit a second single-family dwelling on parcel 94; the second dwelling will also be the second farm dwelling.

10. **Agricultural Usage.** According to the County of Hawai'i Real Property Tax Division's online 'Agricultural Use Indicator,' it confirms that parcel 94 is not yet assessed and reported in agricultural usage, according to the subject parcel's acres in production, agricultural soil type, and the parcel's agricultural value. The landowner-applicant, Mr. Carey, will request RPT for a follow-up re-evaluation and re-assessment on the property's agricultural usage. This request is to be made at a later date to update the parcel's real property tax assessment classification.

Although the County Real Property Tax Division's assessment is helpful and would have supported parcel 94's AFDA application – it is not conclusive.

The submitted application's attachment, the 'Farm Plan Summary' of current agricultural usage, the site plan details of current agricultural land use, the narrative discussion on current farming efforts substantiated with copies of receipts for farm related expenses and investment costs, attests to the existing ongoing effort on parcel 94 of startup farming for commercial cacao farm production.

11. **Rationale for Establishing the Additional Farm Dwelling (AFD):** To provide the additional farm dwelling on parcel 94 for housing of the landowner's daughter and her partner.

The landowner-applicant, Mr. Carey and his wife live on parcel 94 but have age and health related limitations that require the live-in assistance and help of their daughter and her partner. Her assistance is needed to support and maintain parcel 94's startup development of the commercial cacao farm operations.

12. **Farm Plan Summary and Site Plan.** The Farm Site Plan of parcel 94 represents a 3.003-acre lot with approximately just less than one acre planted with 70 cacao trees for commercial cacao farm production.
 - A. **Evidence submitted for the existing startup farming to develop a commercial cacao farm operation:** Copies of receipts were submitted to document expenditure and investment costs spent on a range of expenses: for farm fertilizer, farm equipment or tools, cinder soil medium, cacao tree plants, and machine ground work for tree plantings.

FINDINGS

1. **Farm Dwellings & Additional Farm Dwellings.** In the State Land Use Agricultural District, farm dwellings are 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 Hawai'i County Zoning Code sec. 25-5-77 (b) and (c).

The State law of HRS sec. 205-4.5(b) permits residential (non-farm) single-family dwellings only on lots created before June 4, 1976. Therefore, after June 4, 1976, lots created and classified in State Land Use Agricultural and single-family dwelling construction are subject to the requirement to fulfill the farm dwelling standards of sec. 205-4.5 (a)(4). The State law and County Code sections on farm dwelling standards are discussed below.

Farm Dwelling Standard. 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 Hawai'i 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. **Farm Dwelling Requirements: For Building 2 & the Request for the Proposed AFD.** County Planning Department records confirm that parcel 94 was officially created before June 4, 1976, by Subdivision No. 3350 (approved: January 23, 1974). Background Report #4, stated above, confirms that this property is located and classified in the State Land Use Agricultural District.

However, on parcel 94, Building 2 was constructed after June 4, 1976, to replace the fire damaged Building 1, which is subject to a County demolition permit. Therefore, according to the above-cited State law of sections (secs.) 205-4.5(b), 205-4.5 (a)(4), the Hawai'i County Code sections and Planning Department Rule, these laws require Building 2 and the requested proposed AFD to be farm dwellings that comply with and fulfill the above-discussed farm dwelling standards.

The completion of the County Planning Department form, the Farm Dwelling Notice, is the administrative process to satisfy the Farm Dwelling requirement of the first dwelling. The applicant's proposed second dwelling is subject to the application and processing for an Additional Farm Dwelling Agreement (AFDA).

3. **Working Farm and Commercial Agriculture.** The documentation of expenditure and investment costs to pursue and realize the existing startup commercial cacao farm, the submitted farm plan, and the agreement to use the dwelling for commercial agriculture document and substantiate 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 Hawai'i 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). Additionally, 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. **Approved Water Source System and Wastewater System.** County of Hawai'i 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:

The first standard requires an approved water system to provide water to the subject building site; and, 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 Hawai'i Department of Health.

Please note that these two improvements for the additional farm dwelling requires compliance with the construction standards of the County building permit application process.

DECISION AND CONDITIONS

As a result of the above-findings and background report, 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 commercial agricultural activity or pursuit as summarized in this letter and represented on the submitted Farm Plan Summary and other application materials.
2. **Right to Inspect.** The First Party, identified in the Additional Farm Dwelling Agreement, shall allow the Second Party, the Hawai'i County Planning Department or its representative, the right 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. Haw. County Zoning Code sec. 25-2-10 and Haw. County Planning Department Rule 13-8 (d)(2).
4. **The enclosed AFDA** shall be returned to the Planning Department with the appropriate notarized signature(s) **along with a check made out to the State of Hawai'i Bureau of Conveyances in the amount of \$41.00** (Regular System) in accordance with the enclosed **AFDA Instructions**.
5. **The farming operation** shall be for **commercial agriculture** 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. Haw. County Planning Department Rule 13-8 (d)(1).
6. 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. Haw. County Planning Department Rule 13-8 (d)(3).

7. **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.** Planning Department Rule 13-8 (d)(3).
8. **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 Hawai'i Department of Health, and any other reviewing agencies/divisions listed on the County Building Permit application.
9. **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 of Hawai'i Department of Health, and the conditions for construction of buildings designed for human occupancy of Hawai'i County Zoning Code sec. 25-4-2 (a) (1) and (2).
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. Haw. County Zoning Code sec. 25-2-7.
11. **Farm Dwelling Notice & the 2014 Existing First Dwelling.** The landowner-applicant, Richard T. Carey, Sr., shall be provided a Farm Dwelling Notice to execute for the 2014 existing first dwelling on parcel 94, Lot D. The original signed notice shall be returned to the Planning Department with a copy provided to the landowner-applicant.
12. **Real Property Tax Division Assessment Reclassification of Converted Ag and Personal Storage Shed (the former 1979 fire-damaged dwelling).**
Upon the completed construction or occupancy of the approved Additional Farm Dwelling, the landowner-applicant shall notify the County RPT Division to have the ag and personal storage shed reassessed and reclassified from a residential dwelling to a nonresidential shed.

In the alternative, should the landowner-applicant of parcel 94, Lot D, demolish the ag and personal storage shed – he shall provide written notification to the Planning Department and the RPT Division that the ag and personal storage shed has been demolished.

Mr. Richard T. Carey, Sr.
November 15, 2019
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Should any further questions or concerns arise, please feel free to contact staff planner, Earl Lucero, at (808) 961-8160, or via email at Earl.Lucero@hawaiicounty.gov.

Sincerely,


MICHAEL YEE
Planning Director

EML:jaa

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Enclosures: Farm Dwelling Notice form
AFDA document
AFDA document instruction sheet
Exhibit A: Planning Director's Approval Letter of AFD dated November 15, 2019

cc: Manager-Chief Engineer, Haw. County Dept. of Water Supply

cc via email: GIS Section w/enclosures
Lisa Miura, Administrator, Haw. County Real Property Tax Division