



acres) and is therefore, is designated for agricultural land use as defined by the State and Use law and the County Zoning classification.

6. **One Existing Farm Dwelling:** Real Property Tax Field Book records and the landowner-applicant's application information with submitted Farm Site Plan confirms one existing farm dwelling exists on the subject parcel. First Farm Dwelling was constructed by permit in 2008, and Real Property Tax Division records confirm that the first dwelling was permitted in 2008 (Building Permit #B2008-045H [March 5, 2008]).
7. **Proposed Request:**  
**Additional Farm Dwelling (Second Farm Dwelling).** Agricultural State Land Use and County Zoning allows the landowner to apply for an Additional Farm Dwelling (AFD) on this property, pursuant to HRS sec. 205-4.5 (a)(4) or (b) and Hawai'i County Zoning Code sec. 25-5-77 (b) or (c), and Hawai'i County Planning Department Rule 13-4 (c).

**Commercial Agricultural 'Pursuit': Existing Start-up Orchard Farming Operation.** To substantiate the development of commercial agriculture on subject parcel, the landowner-applicants have submitted documentation to satisfy the statutory standards of the two state laws germane to evaluating this application: the state law of HRS sec. 204-4.5 (a)(4) for 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 [farm] dwelling, ...*"; secondly, the state law of sec. 165-2 defines "farming operation" to mean '*... a commercial agricultural ... [or whatever type of agriculture is undertaken] facility or pursuit conducted, in whole or in part, ...*.' (Emphasis added).

Official County Agricultural Assessment. According to Real Property Tax records, the property is **not** currently (2020) assessed for any agricultural use on the property. The property class is homeowner.

Located On & Used in Connection with a Farm, HRS sec. 205-4.5 (a)(4). Although the County Real Property Tax agricultural assessment does not provided verification of agricultural usage, the expenses to plant and start the farm substantiates consistency with one of the two statutory criteria recited in HRS sec. 205-4.5 (a)(4): That the proposed Additional Farm Dwelling will be located on, and used in connection with, an existing farming operation.

Farm Site Plan of an Existing Orchard Farm Operation. The landowner-applicant's agricultural use as shown on the submitted farm plan is consistent with the above-discussed the landowner-applicant's documentation of investment expenditures for orchard (discussed below).

Essentially, the landowner-applicants have established an existing orchard farm with a variety of fruit trees planted in the ground on the subject parcel; therefore, the requested proposed Additional Farm Dwelling will comply with HRS sec. 205-4.5 (a)(4) and the

statutory criteria that specifies the AFD to be located on, and used in connection with, a farm.

Farming Operation means a Commercial Agricultural Facility or Pursuit, Conducted in Whole or in Part, according to HRS sec. 165-2. The landowner-applicant's orchard satisfies the definition standards of HRS sec. 165-2 for a commercial agricultural pursuit conducted in whole or in part.

The below discussion on 'Documentation' lists some of the investment costs and expenditures made so far to establish their farming operation for commercial agricultural 'pursuit.' In general, based on the submitted copies of receipts, the landowner-applicants state they have spent in excess of \$29,000 to pursue their farm operation for commercial agriculture.

Plant It Hawai'i	1251.73
HPM Building Supply	840.66
Home Depot	2045,13
Material - Rock	1000.50

These submittals substantiate the landowner-applicant's 'pursuit' to conduct a "farming operation" for agricultural income. Plantings have been completed for the orchard, as generally depicted on the submitted Farm Plan.

### FINDINGS

1. **Farm Dwellings & Additional Farm Dwellings.** For properties classified and located 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).

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. 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. **Approval of the Additional Farm Dwelling.** Background Information #4 and #5, confirmed that this property is located and classified in the State Land Use Agricultural and the County Agricultural Zoning districts.

Approval of the Additional Farm Dwelling Application (AFDA): The first dwelling permitted in 1969, permits the dwelling to function as the first farm dwelling on the parcel. Furthermore, approval of the farm dwelling requires that it comply with and fulfill the above-discussed farm dwelling standards. The status of an Additional Farm Dwelling was discussed above in Background Information #7.

- 3. Working Farm and Commercial Agriculture.** The documentation of investment costs to pursue and realize the commercial farm operation for the production and harvest of avocado, the submitted farm plan, the documentation of investment costs and expenditures needed for the startup of the farm, and the agreement to use the proposed dwelling for farm-related agricultural activity document and substantiate that the applicant's proposal and 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; ...". Additionally, HRS sec. 205-4.5(a)(4) requires the agricultural activity to provide income to the family occupying the farm dwelling, discussed above at Findings #1.

The state and county laws do not define the terms commercial agriculture, farm, 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 proposed 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. As discussed above, we find the landowner-applicant's proposal satisfies the basic criteria of a commercial agricultural pursuit in part for a startup farm operation to produce and harvest their avocado.

- 4. Approved Water Source System and Wastewater System.** County of Hawai'i Zoning Code sec. 25-4-2 (a) (1) and (2), regulate 'Conditions for Construction of Buildings Designed for Human Occupancy,' and includes 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. Furthermore, 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**

Your request to construct one (1) Additional Farm Dwelling is **approved**. The Additional Farm Dwelling is subject to the following conditions:

1. Your AFDA (or agreement) has been approved based on the existing commercial agricultural activity or pursuit as summarized in this letter and represented on the submitted Farm Plan Summary and the other above-discussed application or supplement materials.
2. Qualified Right to Inspect. As identified in the Additional Farm Dwelling Agreement, the First Party, shall allow the Second Party, the Hawai'i County Planning Department, or its representative, to inspect the farm operation upon reasonable prior notice and at a mutually agreeable date and time.
3. AFDA Runs with the Land. 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.
4. Instructions. 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.
5. Requirement of Commercial Agriculture & Working Farm or Farm Operation. 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, parcel 008, Lot 1715-A. Family members who are not engaged in agricultural or farm-related activities are allowed to reside in the Additional Farm Dwelling.
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.
7. Recordation. **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 to the State of Hawai'i by the Planning Department.**
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 Hawai'i State Department of Health, and the conditions for construction of buildings designed for human occupancy of Hawai'i County Code Zoning sec. 25-4-2 (a) (1) and (2).
10. Two Year Time Period to obtain a County Building Permit. 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 feel free to contact Norren Kato at [norren.kato@hawaiicounty.gov](mailto:norren.kato@hawaiicounty.gov).

Sincerely,

*Zendo Kern*  
Zendo Kern (Oct 5, 2021 07:12 HST)

ZENDO KERN  
Planning Director

NK:cn

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Enclosures: AFDA document  
AFDA document instruction sheet

cc w/Encl.: Chief Sanitarian, DOH  
Manager-Chief Engineer, DWS

cc (via email): GIS Section (letter w/enclosures)  
Lisa Miura, Administrator, Real Property Tax Office (letter only)

## 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.

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AFTER RECORDATION, RETURN BY MAIL TO:

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

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TITLE OF DOCUMENT:

**ADDITIONAL FARM DWELLING AGREEMENT (FDA-21-000502)**

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PARTIES TO DOCUMENT:

**FIRST PARTY:**           **Van Huynh  
Richard Nurre**

**SECOND PARTY:**       **COUNTY OF HAWAI'I**

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PROPERTY DESCRIPTION:

Lot 36, Por. of Pepe'ekeo Point. Subdivision,  
Makahaloa, South Hilo, Hawai'i Island,  
Hawaii.

**TMK: (3) 2-8-008:060**

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ADDITIONAL FARM DWELLING AGREEMENT

THIS AGREEMENT made and executed this \_\_\_ day of \_\_\_\_\_, 2021, by and between VAN HUYNH, and RICHARD NURRE, herein called the "First Party," whose mailing address is PO BOX 627, Pepe'ekeo, HI 96783; 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 located on the real property of Lot 36. The property, Lot 36, is described as a portion of Pepe'ekeo Point. Subdivision, Makahanaloa, South Hilo, Hawai'i Island, Hawaii, containing 3.2 acres, **Tax Map Key (3) 2-8-008:060**, situated in the State Land Use Agricultural district and with the county zoning of Agricultural (A-20a) 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 (the first 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 36.

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 36, 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 25-2-36.

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:

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**VAN HUYNH**, Fee Owner, Joint Tenancy

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**RICHARD NURRE**, Fee Owner

SECOND PARTY:

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**ZENDO KERN**, Planning Director  
County of Hawai'i Planning Department

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

On this \_\_\_\_\_ day of \_\_\_\_\_, 2021 before me personally appeared VAN HUYNH and RICHARD NURRE, to me known 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 Hawai‘i

My commission expires: \_\_\_\_\_