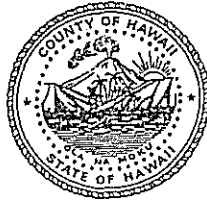


Harry Kim
Mayor



Christopher J. Yuen
Director

Roy R. Takemoto
Deputy Director

County of Hawaii

PLANNING DEPARTMENT

101 Pauahi Street, Suite 3 • Hilo, Hawaii 96720-3043
(808) 961-8288 • Fax (808) 961-8742

November 4, 2004

Kristin M. Luning
P.O. Box 725
Keaau, Hawaii 96749

Dear Ms. Luning:

SUBJECT: Additional Farm Dwelling Agreement
Applicants: Kristin M. Luning
Land Owners: Kristin M. Luning
State Land Use: Agricultural
County Zoning: A-3a
Land Area: 2.666 Acres
Tax Map Key: (3) 1-6-063:092

Pursuant to authority conferred to the Planning Director by Chapter 25, Article 5, Division 7, Section 25-5-77 of the Zoning Code and Planning Department Rule 13, Farm Dwellings, we have reviewed your request for an additional farm dwelling on the subject property. Your submittals included the following information:

1. Name and address and signature of the landowner.
2. A farm plan or evidence of the applicant's continual agricultural productivity or farming operation within the County, including an explanation of why this additional farm dwelling is needed in connection with the agricultural productivity or farming operation. Your farm plan included the following ongoing and proposed income producing agricultural activities:

(a) Ongoing agricultural activities include:

Hawai'i County is an equal opportunity provider and employer

WRY/062027

EXHIBIT

A

NOV 4 2004

- i. One 30' x 60' greenhouse for raising vanda orchids; and
 - ii. Eight goats in a 125' x 400' fenced area.
- (b) Proposed agricultural activities include:
- i. Addition of two 30' x 60' greenhouses for the orchids; and
 - ii. Seven more goats into the same penned area for a total of fifteen.
- (c) Combined labor man-hours are approximately 30 per week at present with approximately 38 additional hours at completion.
3. In support, evidence of a State of Hawaii Department of Taxation's General Excise (GE) Tax License has also been presented.
 4. Applicant's commitment to the farm plan will be shown in the form of the enclosed Additional Farm Dwelling Agreement affidavit, to be notarized and submitted for recordation with the Bureau of Conveyances, which states that the additional dwelling shall be used for farm-related purposes.

Findings:

1. In Chapter 205, Hawaii Revised Statutes (HRS), the State Land Use Law does not authorize residential dwellings as a permitted use in the State Land Use Agricultural district unless the dwelling is related to an agricultural activity or is a farm dwelling. A **farm dwelling** as defined in Section 205-4.5, Chapter 205, HRS, means a **single family dwelling located on and used in connection with a farm**, including clusters of single family farm dwellings permitted within agricultural parks developed by the State, or **where agricultural activity provides income to the family occupying the dwelling.** (emphasis added)
2. The subject lot was created by subdivision (SUB 1903) approved on November 24, 1958, which, pursuant to HRS §205-4.5(b), allows the first dwelling on the lot to be a single-family dwelling.
3. The Farm Plan, GE Tax License (ID number 30061539), and the agreement to use the dwelling for agricultural or farm-related activity on the building site demonstrate that there is income producing agricultural activity and the income is being taxed.
4. In addition, the following agencies have submitted their comments as stated below:

EXHIBIT

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 - ii. Eight goats in a 125' x 400' fenced area.
- (b) Proposed agricultural activities include:
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3. The Farm Plan, GE Tax License (ID number 30061539), and the agreement to use the dwelling for agricultural or farm-related activity on the building site demonstrate that there is income producing agricultural activity and the income is being taxed.
4. In addition, the following agencies have submitted their comments as stated below:

EXHIBIT

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- (a) Department of Water Supply (DWS) (Letter dated September 23, 2004):

“We have reviewed the subject application and have the following information.

The property does not have an existing water service with the Department as the parcel is beyond the service limits of the Department’s existing water system. Also, as the applicant indicates that the additional farm dwelling will be on a water catchment system, the Department has no objection to the application.

Should there be any questions, please call Ms. Shari Komata of our Water Resources and Planning Branch at 961-8070, extension 252.”

- (b) Real Property Tax Office (Response form dated September 3, 2004):

“There are no comments at this time.

Real Property taxes are paid through December 31, 2004.”

- (c) Department of Health (DOH) (Memorandum dated September 17, 2004):

“Wastewater Branch has no record of the cesspool for the recreation building. You may be required to have a cesspool design and an inspection submitted to the Health Department.”

Decision:

In view of the above, your request to construct **a second (first AFD) dwelling is approved** subject to the following conditions:

1. The additional farm dwelling shall only be used to 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 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. The enclosed Additional Farm Dwelling Agreement must be returned to the Planning Department with the appropriate notarized signatures along with a check made out to the Bureau of Conveyances in the amount of \$25.00 in accordance with the enclosed Additional Farm Dwelling Agreement

EXHIBIT

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Instructions. The Planning Department will not approve a building permit application for the additional dwelling until the AFDA document and all required attachments have been accepted for recordation.

3. The First Party shall comply with all other applicable rules, regulations, and requirements of the Planning Department (including but not limited to the Zoning Code, Chapter 25), Department of Public Works, Department of Water Supply, Fire Department and State Department of Health and other reviewing agencies/divisions listed on the Building Permit Application.
4. Your Additional Farm Dwelling Agreement has been approved based on ongoing/increased agricultural activity as summarized previously in this letter.
5. The First Party shall allow the Second Party or its representative to inspect the farm upon reasonable prior notice.
6. This Additional Farm Dwelling Agreement shall be valid for a period of two (2) years from the date of this approval letter. The applicant must secure a building permit for the additional farm dwelling within that time. Failure to secure a building permit for this additional farm dwelling on or before October 26, 2006 may cause the Director to initiate proceedings to invalidate the AFDA.
7. In reference to the DWS comment, may we suggest the following:
 - a. Any dwelling not serviced by a County water system should be provided with and maintain a private potable rain catchment system which includes a minimum 6,000 gallons for domestic consumption or potable uses. This catchment system should adhere to the Department of Public Works, Building Division's "Guidelines for Owners of Rain Catchment Water Systems" as well as the State Department of Health requirements related to water testing and water purifying devices.
 - b. Any dwelling on a water catchment system should also be provided with and maintain an additional 3,000 gallon water storage capacity for fire fighting and emergency purposes. The emergency water supply system, including the necessary compatible connector system and location of the water storage facility on the property, should meet with the approval of the Hawaii County Fire Department.

EXHIBIT

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Kristin M. Luning
Page 5
November 4, 2004

Should you have any questions, please contact Jonathan Holmes of this office.

Sincerely,



CHRISTOPHER J. YUEN
Planning Director

JRH:mad
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Enclosures: AFDA document
AFDA document instruction sheet

xc: Mr. Milton Pavao, DWS
Mr. Mike McCall, RPT

EXHIBIT
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R-942 STATE OF HAWAII
BUREAU OF CONVEYANCES
RECORDED
DEC 15, 2004 08:02 AM
Doc No(s) 2004-253084



/s/ CARL T. WATANABE
REGISTRAR OF CONVEYANCES

20 1/1 Z6

AFTER RECORDATION, RETURN BY MAIL TO:

County of Hawaii Planning Department
101 Pauahi Street, Suite 3
Hilo, Hawaii 96720

TITLE OF DOCUMENT:

ADDITIONAL FARM DWELLING AGREEMENT

PARTIES TO DOCUMENT:

FIRST PARTY: ^{EN} KRISTIN M. LUNING *ML*

SECOND PARTY: COUNTY OF HAWAII

PROPERTY DESCRIPTION:

TMK: (3) 1-6-063:092

ADDITIONAL FARM DWELLING AGREEMENT

THIS AGREEMENT made and executed this 25th day of October, 2004, by and between
^{EN}
LMO KRISTIN M. LUNING, herein called the "First Party," whose mailing address is P.O. Box 725,
Kea'au, Hawaii 96749, and the **COUNTY OF HAWAII**, herein called the "Second Party."

IT IS HEREBY AGREED that the First Party may construct a second farm dwelling located on the property described by Tax Map Key (3) 1-6-063:092 situated within the State Land Use Agricultural district and zoned Agricultural (A-3a) by the Second Party.

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

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 if this agreement is with a lessee, the legal owner shall be a party to this agreement.

IT IS HEREBY FURTHER AGREED that should the pertinent provisions of the State and County laws and 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 that if the property is situated within the State Land Use Agricultural district, the Second Party may impose a fine of not more than \$5,000 for violation of Section 205-4.5, Hawaii Revised Statutes. 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 any additional violation. The Second Party may also impose fines for any violation of Chapter 25, Hawaii County Code, as amended, in accordance with the procedures and fine schedule outlined in Division 3, Article 2, of said code.

IN CONSIDERATION OF THE AFORESAID, the Second Party hereby approves this Agreement as being in conformity with Sections 205-2 and 205-4.5 of the Hawaii Revised Statutes, relative to permitted uses within the State Land Use Agricultural district. This Agreement is also in conformance with Chapter 25, Hawaii County Code, as amended.

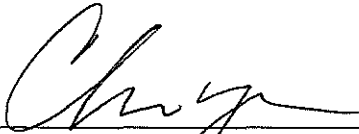
IN WITNESS WHEREOF, the parties have executed this agreement on the day and year first above written.

FIRST PARTY:



LAW **KRISTIN M. LUNING**, Legal Owner
EN

SECOND PARTY:



CHRISTOPHER J. YUEN, Planning Director
County of Hawaii Planning Department

STATE OF HAWAII

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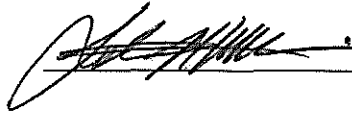
) SS.

COUNTY OF HAWAII

)

On this 16th day of NOVEMBER, 2004 before me personally
LMO appeared ^{EN} KRISTIN M. LUNING, to me known to be the person described in and
who executed the foregoing instrument, and acknowledged that she executed the
same as her free act and deed.

LS



Notary Public, State of HAWAII

LESTER M. OKAZAKI

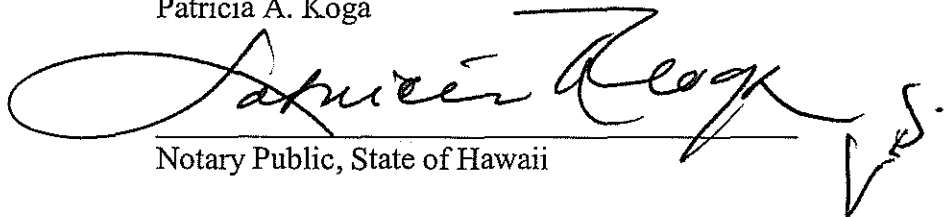
My commission expires: DECEMBER 21, 2007

STATE OF HAWAII)
) SS
COUNTY OF HAWAII)

On this 9th day of December, 2004 before me personally appeared

CHRISTOPHER J. YUEN, to me personally known, who, being by me duly sworn, did say that he is the Planning Director of the County of Hawaii; and that the Planning Department of the County of Hawaii has no corporate seal; and that the instrument was signed on behalf of the Planning Department of the County of Hawaii, a government agency, and said Christopher J. Yuen acknowledged the instrument to be the free act and deed of said Planning Department, County of Hawaii.

Patricia A. Koga



Notary Public, State of Hawaii

My commission expires: 07/17/06

#2 Attached

Site Plan

Kristen M Luning
Pomox 725
Lead 4 96749
808-966-6387

