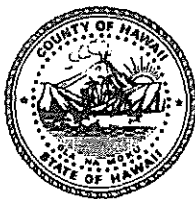


Harry Kim  
Mayor



Christopher J. Yuen  
Director

Brad Kurokawa, ASLA  
LEED® AP  
Deputy Director

## County of Hawaii

### PLANNING DEPARTMENT

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

September 8, 2006

Ms. Elise Mastronardo  
P.O. Box 2784  
Kamuela, Hawaii 96743

Dear Ms. Mastronardo:

**SUBJECT: Additional Farm Dwelling Agreement (fda-06-000122)**

**Applicants: Elise Mastronardo**  
**Land Owners: Elise Mastronardo**  
**State Land Use: Agricultural**  
**County Zoning: A-40a**  
**Land Area: 6.22 Acres**  
**Tax Map Key: (3) 4-8-007:017**

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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, address and signature of the applicant/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 AFD is needed in connection with the agricultural productivity or farming operation.

Your farm plan included the following ongoing income producing agricultural activities:

(a) Ongoing agricultural activities include the following:

- i. Coffee plants on one acre, Bananas on ½ acre and 12 avocado trees along with miscellaneous other fruit trees.
  - (b) Proposed agricultural activities include the following:
    - i. Additional coffee, harvesting of bamboo and the introduction of farm animals.
  - (c) Estimated man-hours average 30 to 40 per week to maintain the existing mix of products; to prepare, plant, maintain and harvest expanded areas of production, and market produce.
3. In support of the application, evidence of a State of Hawaii Department of Taxation's General Excise (GE) Tax License has been presented.
  5. 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 prior to June 4, 1976, 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 W00948516-05), 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 that the income is being taxed.
4. In addition, the following agencies have submitted their comments as stated below:

(a) Department of Water Supply (DWS) (Letter dated September 5, 2006):

“We have reviewed the subject application and have the following comments and conditions.

An existing 5/8-inch meter services this property and is adequate for only one single-family dwelling unit at an average of 400 gallons per day. Inasmuch as this application is proposing an additional dwelling, the installation of a separate 5/8-inch meter would normally be required in accordance with Department's Rules and Regulations. However, the Department's existing water system facilities cannot support additional water meters at this time. Extensive improvements and additions, including source, storage, booster pumps, transmission, and distribution facilities, must be constructed. Currently, sufficient funding is not available from the Department for such improvements and no time schedule is set.

Therefore, the Department has no objections to the proposed application, subject to the applicant understanding and accepting that the Department cannot provide water service to the proposed additional farm dwelling. Further, should the application be approved, both dwellings shall not share the existing meter.

In addition, the applicant, through a copy of this letter, shall be informed that a backflow prevention assembly must be installed just after the existing meter as there is existing agricultural activity on the subject parcel. A copy of the Department's backflow prevention handout is attached to help the applicant understand this requirement.

Should there be any questions, please contact Mr. Finn McCall of our Water Resources and Planning Branch at 961-8070, extension 255.”

(b) Real Property Tax Office (RPT):

The RPT office did not comment on this application as of this date.

(c) Department of Health (DOH) (Memorandum dated August 17, 2006):

“The Department of Health’s Safe Drinking Water Branch authority on drinking water quality is based on the definition of a ‘public water system.’ A ‘public water system’ means a water system which provides water for human consumption through pipe or other constructed conveyance if such system has fifteen (15) service connections or regularly serves an average of at least twenty-five (25) individuals daily at least sixty (60) days out of the year. All public water systems are regulated by the Department of Health and shall be in compliance with the Hawaii Administrative Rules, Title 11, Chapter 20. Recommend the subdivision lots be connected to an existing public water system.

Concerns on water quality for lead, copper, algae and microbiological and chemical contaminations in private water systems have identified the need for self monitoring. The Department of Health does not support the use of these private rain catchment systems for drinking purposes since the quality may not meet potable water standards.

The Department of Health (DOH), Clean Water Branch (CWB), acknowledges receipt of the subject document on August 11, 2006. The CWB has reviewed the limited information contained in the subject document and offers the following comments:

1. The Army Corps of Engineers should be contacted at (808) 438-9258 for this project. Pursuant to Federal Water Pollution Control Act (commonly known as the ‘Clean Water Act’ (CWA)), Paragraph 401(a)(1), a Section 401 Water Quality Certification (WQC) is required for ‘[a]ny applicant for Federal license or permit to conduct any activity including, but not limited to, the construction or operation of facilities, which may result in any discharge into the navigable waters...’. The term ‘discharge’ is defined in CWA, Subsections 502(16), 502(12), and 502(6); Title 40, Code of Federal Regulations, Section 122.2, and Hawaii Administrative Rules (HAR), Chapter 11-54.
2. In accordance with HAR, Sections 11-55-04 and 11-55-34.05, the Director of Health may require the submittal of an individual permit application or a Notice of Intent (NOI) for general permit coverage authorized under the National Pollutant Discharge Elimination System (NPDES).
  - a. An application for an NPDES individual permit is to be submitted at least 180 days before the commencement of the respective activities. The NPDES application forms may also be picked up at our office or downloaded from our website at:

<http://www.hawaii.gov/health/environmental/water/cleanwater/forms/indiv-index.html>

- b. An NOI to be covered by an NPDES general permit is to be submitted at least 30 days before the commencement of the respective activity. A separate NOI is needed for coverage under each NPDES general permit. The NOI forms may be picked up at our office or downloaded from our website at:

<http://www.hawaii.gov/health/environmental/water/cleanwater/forms/genl-index.html>

- i. Storm water associated with industrial activities, as defined in Title 40, Code of Federal Regulations, Sections 122.26(b)(14)(i) through 122.26(b)(14)(ix) and 122.26(b)(14)(xi). [HAR, Chapter 11-55, Appendix B]
- ii. Construction activities, including clearing, grading, and excavation, that result in the disturbance of equal to or greater than one (1) acre of total land area. The total land area includes a contiguous area where multiple separate and distinct construction activities may be taking place at different times on different schedules under a larger common plan of development or sale. **An NPDES permit is required before the commencement of the construction activities.** [HAR, Chapter 11-55, Appendix C]
- iii. Discharges of treated effluent from leaking underground storage tank remedial activities. [HAR, Chapter 11-55, Appendix D]
- iv. Discharges of once through cooling water less than one (1) million gallons per day. [HAR, Chapter 11-55, Appendix E]
- v. Discharges of hydrotesting water. [HAR, Chapter 11-55, Appendix F]
- vi. Discharges of construction dewatering effluent. [HAR, Chapter 11-55, Appendix G]

- vii. Discharges of treated effluent from petroleum bulk stations and terminals. [HAR, Chapter 11-55, Appendix H]
  - viii. Discharges of treated effluent from well drilling activities. [HAR, Chapter 11-55, Appendix I]
  - ix. Discharges of treated effluent from recycled water distribution systems. [HAR, Chapter 11-55, Appendix J]
  - x. Discharges of storm water from a small municipal separate storm sewer system. [HAR, Chapter 11-55, Appendix K]
  - xi. Discharges of circulation water from decorative ponds or tanks. [HAR, Chapter 11-55, Appendix L]”
3. In accordance with HAR, Section 11-55-38, the applicant for an NPDES permit is required to either submit a copy of the new NOI or NPDES permit application to the State Department of Land and Natural Resources, Historic Preservation Division (SHPD), or demonstrate to the satisfaction of the DOH that the project, activity, or site covered by the NOI or application has been or is being reviewed by SHPD. If applicable, please submit a copy of the request for review by SHPD or SHPD’s determination letter for the project.
4. Any discharges related to project construction or operation activities, with or without a Section 401 WQC or NPDES permit coverage, shall comply with the applicable State Water Quality Standards as specified in HAR, Chapter 11-54. Hawaii Revised Statutes, Subsection 342D-50(a) requires that ‘[n]o person, including any public body, shall discharge any water pollutants into state waters, or cause or allow any water pollutant to enter state waters except in compliance with this chapter, rules adopted pursuant to this chapter, or permit or variance issued b the director.’

If you have any questions, please contact Mr. Alec Wong, Supervisor of the Engineering Section, CWB, at (808) 586-4309.

The use of individual wastewater systems is allowed. The type and number of individual wastewater systems to be used will be determined at the time of building permit application.”

Decision:

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

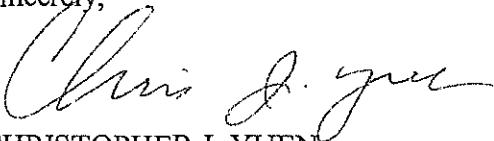
1. The AFD shall only be used to provide shelter for persons involved in the agricultural or farm-related activity on the building site. Family members who are not engaged in agricultural or farm-related activities are allowed to reside in the farm dwelling.
2. The agreement shall run with the land and apply to all persons who may, now or in the future, use or occupy the additional farm dwelling. The enclosed AFD 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 AFDA 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. 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 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.
4. 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 shall be adhered to.

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5. Your AFDA has been approved based on ongoing and expanded agricultural activity as summarized previously in this letter.
6. The First Party shall allow the Second Party or its representative to inspect the farm upon reasonable prior notice.
7. This AFDA shall be valid for a period of two (2) years from the date of this approval letter to secure a BP for the additional farm dwelling. Failure to secure a BP for this additional farm dwelling on or before September 9, 2008, may cause the Director to initiate proceedings to invalidate the AFDA.

Should you have any questions, please feel free to contact Jonathan Holmes of this Department.

Sincerely,



CHRISTOPHER J. YUEN  
Planning Director

JRH:cd

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Enclosures: AFDA document  
AFDA document instruction sheet

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



Scanned Map  
Unavailable  
Due to Size

See File

