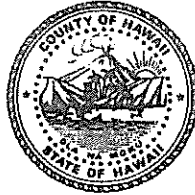


Harry Kim
Mayor



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

May 7, 2007

Gail Duituturaga
P.O. Box 1184
Mt. View, Hawaii 96771

Dear Gail Duituturaga:

SUBJECT: Additional Farm Dwelling Agreement (FDA-07-000163)

Applicant: Gail Duituturaga
Land Owners: Tevita B. and Gail Duituturaga
State Land Use: Agricultural
County Zoning: A-20a
Land Area: 24.918 Acres
Tax Map Key: (3) 1-8-005:173

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. Names, address and signatures of the applicants/landowners.
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. The applicants presently run a dressage and horse boarding operation on the property. There are currently 4 horses and 4 to 6 students. The Russian Arabian horses are also being selectively bred for the school. Two additional horses are boarded for others.
- ii. There are 10 head of cattle that are rotated between the pastures as part of the overall sustainable management program.
- iii. There are also small amounts of dwarf bananas, ornamental flowers and fan palms.

(b) Proposed agricultural activities include the following:

- i. Continuation of the above with the addition of leasing out pasture space for goats.
- ii. Pink lemonade (20 trees) and tangerine (20 trees) trees occupy 2 acres each and Arabic Kona Coffee (50 trees) will occupy an additional acre for a total of 5 acres dedicated to crops.

(c) Estimated average man-hours of 18 per day and increasing as the fruit trees and coffee mature.

3. In support of the application, evidence of a State of Hawaii Department of Taxation's General Excise Tax License and a copy of a cooperative agreement with the Natural Resources Conservation Service have 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)

Gail Duituturaga

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2. The subject lot was created by subdivision (SUB 7246) approved on March 24, 2000, which, pursuant to HRS §205-4.5(b), requires the first dwelling on the lot to be a farm dwelling.
3. The Farm Plan, GE Tax License (ID number W40567018-01), and the agreement to use the dwelling for agricultural or farm-related activity on the building site demonstrate that there will be income producing agricultural activity and that the income will be taxed.
4. In addition, the following agencies have submitted their comments as stated below:

(a) Department of Water Supply (DWS) (Letter dated April 20, 2007):

"We have reviewed the subject application and have the following comments.

Please be informed that the subject parcel is not within the Department's existing service limits. The nearest point of connection is from an existing 12-inch waterline within Pszyk Road, approximately 2,750 feet north of the subject parcel. Therefore, the Department has no objection to the proposed application, subject to the applicant understanding and accepting that the Department cannot provide service to the proposed Additional Farm Dwelling.

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) (Response form dated March 29, 2007):

"There are no comments at this time. Property Taxes are paid through June 30, 2007."

(c) Department of Health (DOH) (Memorandum dated April 2, 2007):

"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.

Dispensing site locations and food preparation areas would need to meet with the requirements of Chapter 12, Food Establishment Sanitation Code. The applicant may call Ph. 933-0917 to discuss the content of this communication.

The Department of Health (DOH), Clean Water Branch (CWB), acknowledges receipt of the subject document on September 18, 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]

- iii. 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]
- iv. Discharges of treated effluent from leaking underground storage tank remedial activities. [HAR, Chapter 11-55, Appendix D]
- v. Discharges of once through cooling water less than one (1) million gallons per day. [HAR, Chapter 11-55, Appendix E]
- vi. Discharges of hydrotesting water. [HAR, Chapter 11-55, Appendix F]
- vii. Discharges of construction dewatering effluent. [HAR, Chapter 11-55, Appendix G]
- viii. Discharges of treated effluent from petroleum bulk stations and terminals. [HAR, Chapter 11-55, Appendix H]
- ix. Discharges of treated effluent from well drilling activities. [HAR, Chapter 11-55, Appendix I]
- x. Discharges of treated effluent from recycled water distribution systems. [HAR, Chapter 11-55, Appendix J]
- xi. Discharges of storm water from a small municipal separate storm sewer system. [HAR, Chapter 11-55, Appendix K]
- xii. 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 by the director.'

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

We recommend that you review all of the Standard Comments on our website: www.state.us/health/environmental/env-planning/landuse/landuse.html. Any comments specifically applicable to this project should be adhered to."

Decision:

In view of the above, your request to convert an existing structure into a **second (first AFD) farm dwelling** on the property is approved subject to the following conditions:

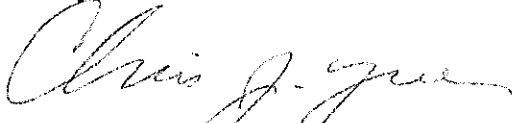
1. The AFD shall only be used to provide shelter for persons involved in the agricultural or farm-related activity on the building site. Family members who are not engaged in agricultural or farm-related activities are allowed to reside in the farm dwelling.

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.
5. Your AFDA has been approved based on existing 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 May 8, 2009, may cause the Director to initiate proceedings to invalidate the AFDA.

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

Sincerely,



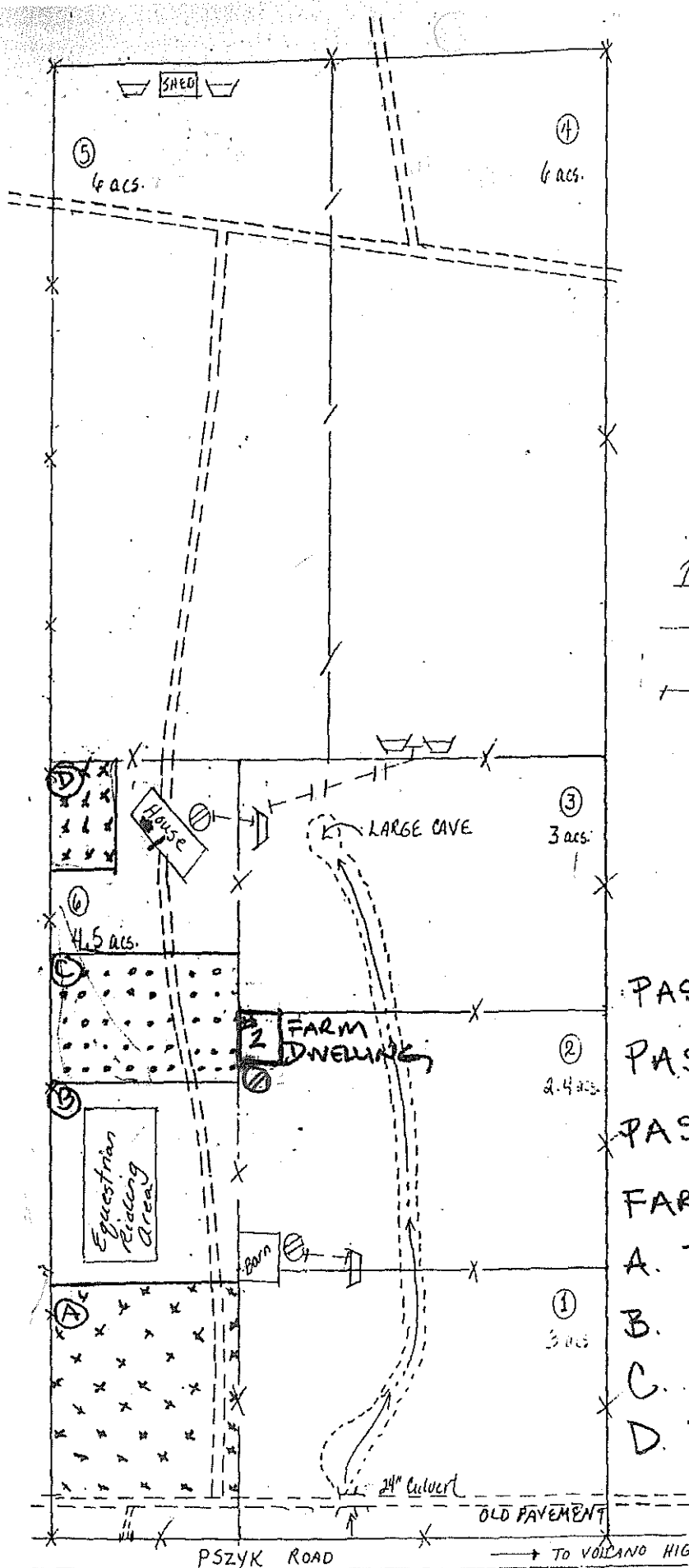
CHRISTOPHER J. YUEN
Planning Director

JRH:cd

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Enclosures: AFDA document
AFDA document instruction sheet

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



LEGEND

Planned		Existing
— / — / —	Cross fencing	— x — x —
— — —	Pipeline	— — —
⌊	Troughs	⌊
⊙	Tanks	⊙

PASTURES 1, 2, 3 HORSES

PASTURES 4 & 5 CATTLE

PASTURE 6 FARM PLOTS

FARM PLOTS

A. PINK LEMONADE / TANGARINE

B. ORNEMENTALS / FOXTAIL PALM

C. COFFEE (ARABIC / KONA)

D. DWARF BANANAS / CAVENDISH