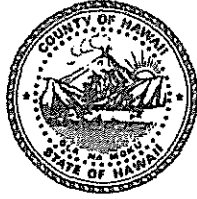


Harry Kim  
Mayor



**County of Hawaii**  
**PLANNING DEPARTMENT**

101 Pauahi Street, Suite 3 • Hilo, Hawaii 96720-4224  
(808) 961-8288 • FAX (808) 961-8742

Christopher J. Yuen  
Director

Brad Kurokawa, ASLA  
**LEED® AP**  
Deputy Director

November 13, 2007

Mr. Russell A. Nakao  
P.O. Box 205  
Mountain View, Hawaii 96771

Dear Mr. Nakao:

**SUBJECT:** Additional Farm Dwelling Agreement (FDA-07-000188)  
**Applicants:** Russell A. Nakao  
**Land Owners:** Russell A. Nakao Trust  
**State Land Use:** Agricultural  
**County Zoning:** A-5a  
**Land Area:** 99.982 Acres  
**Tax Map Key:** (3) 1-8-004:012

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 the signature of the applicant/landowner.
2. A farm plan or evidence of the applicants' 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:

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- i. 13 breeding cows, 1 bull and 6 more heifers;
  - ii. Anthuriums and limited cymbidium orchids on approximately 1.5 acres; and
  - iii. Approximately 4 hours per week are needed for the flowers and an additional 16 hours per week are spent maintaining the herd and pastures.
- b. Proposed agricultural activities include the following:
  - i. The additional farm dwelling will be placed on the property in a spot that will allow the farm help to oversee the majority of the pasture. That will increase security from poachers and dogs and easily observe damage to the fencing from falling tree limbs, etc..
3. 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, Hawai'i 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, evidence of a State of Hawaii General Excise Tax license (#W03086214-01) 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.
4. In addition, the following agencies have submitted their comments as stated below:
  - a. Department of Water Supply (DWS) (Letter dated October 11, 2007):

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

Please be informed that an existing 5/8-inch meter services the subject parcel, which is adequate for only one dwelling unit, and limited to 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 the Department's regulations. However, the Department's existing water system facilities cannot support an additional meter at this time. Extensive improvements would be required, which may include, but not be limited to, source, storage, booster pumps, transmission facilities.

Therefore, the Department has no objections to the proposed application, subject to the applicant understanding and accepting that the Department cannot provide service to the proposed additional farm dwelling. Should the application be approved, both dwellings shall not share the existing meter and the plumbing between both dwellings shall not be interconnected in any way.

Further, as the applicant indicates that there is existing and proposed agricultural activity within the subject parcel, a reduced pressure type backflow prevention assembly must be installed within five (5) feet of the existing meter on private property. The installation of the backflow prevention assembly must be inspected and approved by the Department before commencement of water service.

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

b. Real Property Tax Office (RPT) (Response form dated September 27, 2007):

"50 acres of pasture and 1.5 acres of anthuriums in the 10 year ag dedication program. Also, 41.232 acres in the non-dedicated agricultural use program.

Real Property taxes are paid through December 31, 2007."

c. Department of Health (DOH) (Memorandum dated October 12, 2007):

"The use of individual wastewater systems is allowed. The type and number of individual wastewater systems will be determined by the wastewater rules in effect at the time of building permit application.

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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 system which provide 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 microbial 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.

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

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:

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- 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 Hawai'i 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 any other reviewing agencies/divisions listed on the Building Permit (BP) Application shall be adhered to.
5. Your AFDA has been approved based on ongoing 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 November 14, 2009 may cause the Director to initiate proceedings to invalidate the AFDA.

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Should you have any questions, please feel free to contact Jonathan Holmes of this office at 961-8288.

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

Plot Plan

Tax Map Key 1-8-004-012  
Russell NAKAO 18-1695  
MT View HI (16 Mile)  
Volcano Highway

