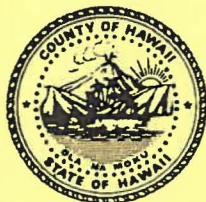


Harry Kim  
Mayor



7-3-007:016  
Christopher J. Yuen  
Director

Brad Kurokawa, ASLA, LEED<sup>TM</sup> AP  
Deputy Director

## County of Hawaii

### PLANNING DEPARTMENT

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

December 3, 2007

Barbara & James Penn  
Jesse Fergerstrom  
73-4526 Kohanaiki Road Box 14A  
Kailua-Kona, HI 96740

Dear Mr. & Mrs Penn and Mr. Fergerstrom:

Additional Farm Dwelling Agreement Application (FDA-07-000189)

Applicants: Penn, Barbara & James  
Fergerstrom, Jesse

Owners: Barbara Penn  
James Penn  
Jesse Fergerstrom

State Land Use: Agriculture

County Zoning: Agricultural (A-3a)

Land Area: 41,420 s.f.

TMK: (3) 7-3-007:016

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 of the landowner(s) or lessee(s), if the latter has a lease on the building site with a term exceeding one year from the date of the farm dwelling agreement.
2. Written authorization of the landowner(s) if the lessee filed the request.
3. 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 the following:
    - i. Maintain and harvest (2) avocado, (4) lilikoi, (1) noni and (4) mango trees.

DEC 14 2007



- b. Proposed agricultural activities include the following:
    - i. Build a 15' x 28' greenhouse to cultivate organic culinary herbs (54 s.f. of basil, 54 s.f. of chives, 36 s.f. of dill, 36 s.f. of marjoram, 72 s.f. of mint, 36 s.f. of sage and 36 s.f. of thyme) and lavender(200 s.f.).
  - c. The current labor man-hours are approximately 5-20 hours per week to maintain and harvest. The proposed labor man-hours are approximately 30-40 hours per week to cultivate, maintain and harvest. The total labor man-hours are approximately 35-60 hours per week.
4. In additional support, a State of Hawaii Department of Taxation's General Excise (GE) Tax License has also 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 by subdivision (SUB 5475), approved on November 26, 1986, 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 W40945000-01), 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 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 October 23, 2007):

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



Barbara & James Penn  
Jesse Fergerstrom  
December 3, 2007  
Page 3

Please be informed that an existing 5/8-inch meter services this property and is adequate for only one 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 the Department's Rules and Regulations. However, the Department cannot provide an additional meter for the proposed additional farm dwelling as the subject parcel does not front on the Department's existing water system facilities.

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 water system plumbing between the two dwellings shall not be interconnected in any way.

In addition, the applicant, through a copy of this letter, shall be informed that a backflow prevention assembly must be installed (if one does not already exist) just after the existing meter, as there is existing agricultural activity to help understand this requirement.

Should there be any questions, you may contact Mr. Ryan Quitoriano of our Water Resources and Planning Branch at 961-8070, extension 256."

b. Real Property Tax Office (RPT):

No comments were received.

c. Department of Health (DOH) (Memorandum dated October 26, 2007):

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

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 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



Barbara & James Penn  
Jesse Fergerstrom  
December 3, 2007  
Page 4

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.html](http://www.state.hi.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 construct a **second farm dwelling** is 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 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 adhere to 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 in part on existing 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 to secure a building permit for the additional farm dwelling. Failure to secure a building permit for this additional farm dwelling on or before December 3, 2009 may cause the Director to initiate proceedings to invalidate the AFDA.
7. An initial extension of time for the performance of conditions within the permit may be granted by the Planning Director upon the following circumstances:



Barbara & James Penn  
Jesse Fergerstrom  
December 3, 2007  
Page 5

- A. Non-performance is the result of conditions that could not have been foreseen or are beyond the control of the applicants, successors, or assigns and that are not the result of their fault or negligence.
- B. Granting of the time extension would not be contrary to the General Plan or Zoning Code.
- C. Granting of the time extension would not be contrary to the original reasons for the granting of the permit.
- D. The time extension granted shall be for a period not to exceed the period originally granted for performance (i.e., a condition to be performed within one year may be extended for up to one additional year).

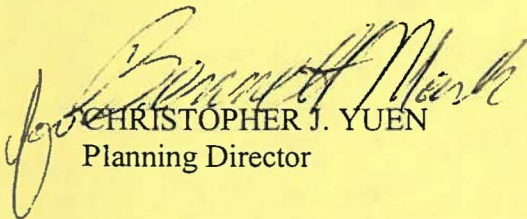
Should any of these conditions not be met or substantially complied with in a timely fashion, the Planning Director may initiate procedures to revoke this permit.

In reference to the Department of Water Supply's comment, we suggest the following:

1. Any dwelling not serviced by a County water system should be provided with and maintain a private potable rain-water catchment system with a minimum capacity of 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.
2. Any farm dwelling should be provided with and maintain a private water supply system with an additional minimum storage capacity of 3,000 gallons for fire fighting and other emergency purposes. The emergency water supply system, including the necessary compatible connection devices and the location of the water storage unit on the property, should meet with the approval of the Hawaii County Fire Department.

If you have any questions please call Deanne Bugado of our West Hawaii Office at 327-3510.

Sincerely,



CHRISTOPHER J. YUEN  
Planning Director

Barbara & James Penn  
Jesse Fergerstrom  
December 3, 2007  
Page 6

DEB:deb

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Enclosure: AFDA document  
AFDA document instruction sheet

xc: Mr. Milton Pavao, DWS  
Mr. Mike McCall, RPT  
Planning Department – Kona

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AFTER RECORDATION, RETURN BY MAIL TO:

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

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TITLE OF DOCUMENT:

**ADDITIONAL FARM DWELLING AGREEMENT**

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PARTIES TO DOCUMENT:

**FIRST PARTY:     BARBARA PENN  
                         JAMES PENN  
                         JESSE FERGERSTROM**

**SECOND PARTY:   COUNTY OF HAWAII**

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PROPERTY DESCRIPTION:

**TMK: (3) 7-3-007:016**

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## ADDITIONAL FARM DWELLING AGREEMENT

THIS AGREEMENT made and executed this 3<sup>rd</sup> day of December, 2007, by and between BARBARA PENN, JAMES PENN and JESSE FERGERSTROM, hereinafter referred to as the "First Party," whose mailing address is 73-4526 Kohanaiki Road Box 14A, Kailua-Kona, Hawaii 96740, and the COUNTY OF HAWAII, hereinafter referred to as the "Second Party."

WHEREAS,

IT IS HEREBY AGREED that the First Party may construct a second farm dwelling located on the property described by Tax Map Key (3) 7-3-007:016 situated within the State Land Use Agricultural district and zoned Agricultural (A-3a) (the "Property") 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 of Hawai'i and County laws and rules and regulations change to authorize said farm dwelling, upon request of the First Party, its successors, heirs, personal representatives and assigns, 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 shall impose a fine against the First Party, its successors, heirs, personal representatives and assigns, of not more than \$5,000.00 for violation of any provision under section 205-4.5, Hawaii Revised Statutes. If the First Party fails to remove such violation within six months of such citation and the violation continues to exist, the First Party shall be subject to a citation for a new and separate violation. There shall be a fine of not more than \$5,000 for any additional violation. The Second Party may impose fines for any violation of Chapter 25, Hawaii County Code, as amended, in accordance with the procedures and fine schedule outlined in Section 25-2-35 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.

[REMAINDER OF THIS PAGE INTENTIONALLY LEFT BLANK]

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

\_\_\_\_\_  
Barbara Penn, Legal Owner

FIRST PARTY

\_\_\_\_\_  
James Penn, Legal Owner

FIRST PARTY

\_\_\_\_\_  
Jesse Fergerstrom, Legal Owner

FIRST PARTY

COUNTY OF HAWAII

By \_\_\_\_\_  
Christopher J. Yuen  
Its Planning Director

SECOND PARTY



STATE OF HAWAII                    )  
  ) SS.  
COUNTY OF HAWAII                )

On this \_\_\_\_\_ day of \_\_\_\_\_, 200\_\_ before me  
personally appeared BARBARA PENN, JAMES PENN and JESSE  
FERGERSTROM to me known to be the persons described in and who executed the  
foregoing instrument, and acknowledged that they executed the same as their free act  
and deed.

\_\_\_\_\_  
Notary Public, State of \_\_\_\_\_

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

STATE OF HAWAII            )  
                                      ) SS  
COUNTY OF HAWAII        )

On this \_\_\_\_ day of \_\_\_\_\_, 2007 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: \_\_\_\_\_



### **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. Enclose a check or money order in the amount of \$25.00, made out to the Bureau of Conveyance, for the Bureau of Conveyance recordation fee.
3. 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.