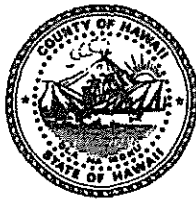


**Harry Kim**  
Mayor



**Christopher J. Yuen**  
Director  
**Brad Kurokawa, ASLA**  
**LEED® AP**  
Deputy Director

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

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

September 12, 2008

Carlsmith Ball LLP  
121 Waianuenue Avenue  
P.O. Box 686  
Hilo, Hawai'i 96720

Dear Sirs/Madam:

**SUBJECT: Additional Farm Dwelling Agreement (FDA-08-000225)**  
**Applicant: Donald Hunter**  
**Land Owner: Donald Hunter**  
**State Land Use: Agricultural**  
**County Zoning: A-3a**  
**Land Area: 6.32 Acres**  
**Tax Map Key: (3) 2-4-006:068**

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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. Names, address and the signatures of the applicants/landowners.
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:
    - i. The property is dedicated to agricultural use through the Real Property Tax Division;

- ii. The activity involves propagation of rare palms and cycads;
  - iii. Approximately 16 hours or more per day, 7 days per week are required for running the farm; and
  - iv. Income is about \$108,000 per year with expenses of about \$60,000 per year.
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 by subdivision (SUB 2555) approved on September 27, 1967, 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 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.
4. In addition, the following agencies have submitted their comments as stated below:
  - a. Department of Water Supply (DWS):  
  
DWS did not comment on this application as of this date.
  - b. Real Property Tax Office (RPT):  
  
RPT did not comment on this application as of this date.

c. Department of Health (DOH) (Memorandum dated August 22, 2008):

“Lands formerly used for sugarcane production are now being developed into communities where residential homes, schools and commercial businesses are being constructed. Chemicals associated with the sugarcane industry persist in soil today and may be a threat to public health and the environment. Elevated arsenic levels were discovered in soil at former sugarcane production areas on the islands. The HEER Office has identified former sugarcane production areas for assessment throughout the state and plans to work with property owners to conduct environmental assessments to identify and address elevated soil arsenic levels prior to finalizing development plans for the property.

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.

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.”

Decision:

In view of the above, your request to construct a **first Additional 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. The applicant is responsible for any State and Federal tax consequences due to the income produced from the farm activity.

Carlsmith Ball LLP

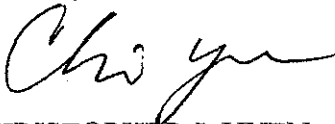
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September 12, 2008

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 September 11, 2010 may cause the Director to initiate proceedings to invalidate the AFDA.

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

Sincerely,



CHRISTOPHER J. YUEN  
Planning Director

LN/JG;jlh

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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

