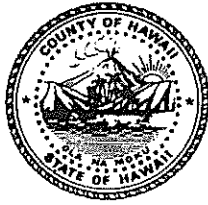


William P. Kenoi
Mayor



BJ Leithead Todd
Director

Margaret K. Masunaga
Deputy

County of Hawaii

PLANNING DEPARTMENT

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

July 14, 2009

Mr. David L. Miller
Ms. Stacey Siegel-Miller
87-3010 Mamalahoa Hwy.
Captain Cook, HI 96704

Dear Mr. and Mrs. Miller:

SUBJECT: Additional Farm Dwelling Agreement Application (FDA-09-000252)
Applicants: David L. Miller and Stacey Siegel-Miller
Owners: David L. Miller and Stacey Siegel-Miller
State Land Use: Agricultural
County Zoning: Agricultural (A-5a)
Land Area: 5.011 Acres
TMK: (3) 8-7-010:017

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:

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- (a) Ongoing agricultural activities include the following:
 - i. Maintain and harvest: 400 coffee trees over approximately 2 acres, 60 navel orange trees over approximately one-half acre, and 24 macadamia nut trees over approximately one-half acre.
 - (b) Proposed agricultural activities include the following:
 - i. Replace approximately 100 of the existing coffee trees which are in poor condition and plant 1,000 or more additional coffee trees on an additional two acres in 2010.
 - (c) After farm expansion for the proposed agricultural activities, the labor man-hours for maintenance, harvesting and marketing will average, on an annual basis, twenty-five (25) or more hours per week.
4. Evidence of existing engagement in agricultural productivity in the form of agricultural processing expense and product sales receipts has also been presented.
 5. The 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 No. 7060R approved April 24, 2001, which, pursuant to HRS §205-4.5(b), requires the first dwelling on the lot to be a farm dwelling.
3. The Farm Plan, General Excise Tax License, and the agreement to use the dwelling for agricultural or farm-related activity on the building site demonstrate that there is/will be income producing agricultural activity and the income is/will be taxed.

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4. In addition, the following agencies have submitted their comments as stated below:

(a) Department of Water Supply (Letter dated June 23, 2009):

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

The subject parcel does not have an existing water service with the Department, as the parcel is not within the service limits of the Department’s existing water system.

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 there be any questions, please contact Mr. Ryan Quitoriano of our Water Resources and Planning Branch at 961-8070, extension 256.”

(b) Real Property Tax Office:

No comments were received.

(c) Department of Health (Memorandum dated July 6, 2009):

“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 lot 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.

We recommend that you review all of the Standard Comments on our website: www.state.hi.us/health/environmental/env-planning/landuse/landuse.html. 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 to be used will be determined by the wastewater rules in effect at the time of building permit application. The proposed new cesspool shown on the application drawing will NOT be allowed.”

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Decision:

In view of the above, your request to construct a **second** farm dwelling is approved 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 ("AFDA") must be returned to the Planning Department with the appropriate notarized signatures of all persons comprising the "First Party" to the agreement 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 with all required attachments has been recorded at the Bureau of Conveyances.
3. The First Party shall comply with 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 on both your existing and your proposed agricultural activities as presented in your farm plan and summarized previously in this letter. It is required that the First Party (owners and lessees) to the Agreement shall continue to carry out and maintain this farm plan for the life of the additional farm dwelling. The Second Party (County of Hawaii Planning Department) of the Agreement may allow modifications for good cause shown by First Party.
5. The First Party shall allow the Second Party or its representative to inspect the farm from time to time upon reasonable prior notice.
6. **The First Party is required to secure a building permit from the Department of Public Works, Building Division, for the construction of the additional farm dwelling on or before July 14, 2011.** Failure to secure a building permit for this additional farm dwelling on or before July 14, 2011 may cause the Director to initiate proceedings to invalidate the AFDA.

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With regard 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.

Concerning the Department of Health's comment regarding the proposed new cesspool not being allowable, we recommend you promptly consult with that agency, for which the Kona office's phone number is 322-1963, as to acceptable individual wastewater systems for your proposed second farm dwelling. Please be advised that your building permit application will not be approved by the County without plans including a wastewater system approved by the Department of Health. Their review and approval, if appropriate, occurs during the course of your building permit application's review.

Should you have any questions on this matter, please contact Keola Childs of our West Hawaii office at 327-3510.

Sincerely,


BJ LEITHEAD TODD
Planning Director

CKC:ckc

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Enclosure: AFDA document
AFDA document instruction sheet

xc: Mr. Milton Pavao, DWS
Mr. Mike McCall, RPT
Planning Department – West Hawaii Office