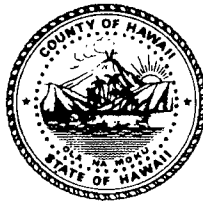


William P. Kenoi
Mayor



BJ Leithead Todd
Director

Margaret K. Masunaga
Deputy

County of Hawai'i

PLANNING DEPARTMENT

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

October 21, 2009

Milton and Carol Hughes-Okada
P.O. Box 11292
Hilo, Hawaii 96721

Dear Sir/Madam:

SUBJECT: Additional Farm Dwelling Agreement (FDA-09-000256)
Applicant: Milton and Carol Hughes-Okada
Land Owner: Milton and Carol Hughes-Okada
State Land Use: Agricultural
County Zoning: A-20a
Land Area: 7.606 Acres
Tax Map Key: (3) 2-6-032:016

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. 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:

EXHIBIT

A

- i. The raising of sheep and horses;
 - ii. Approximately 30 hours per week are required for running the farm.
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 6930) approved on February 19, 1998, which, pursuant to HRS §205-4.5(b), requires the first dwelling on the lot to be a farm 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):

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

Please be informed that an existing 5/8-inch meter services this property and is adequate for only one (1) 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 will be required in accordance with the Department's regulations. However, the Department's existing water system facilities cannot support an additional water meter at this time.

Extensive improvements and additions, which may include, but not be limited to source, storage, booster pumps, transmission, and distribution facilities, would be required. Currently, sufficient funding is not available from the Department for such improvements and no time schedule is set.

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. Further, should the application be approved, both dwellings shall not share the existing meter.

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

b. Department of Health (DOH):

“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: <http://hawaii.gov/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 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 an **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 \$30.00 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. 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.
4. The applicant is responsible for any State and Federal tax consequences due to the income produced from the farm activity.
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 Building Permit for the additional farm dwelling. Failure to secure a BP for this additional farm dwelling on or before October 21, 2011 may cause the Director to initiate proceedings to invalidate the AFDA.

Milton and Carol Hughes-Okada
Page 5
October 21, 2009

Please feel free to contact Larry Nakayama of this office at 961-8288 should you have any further questions and/or concerns.

Sincerely,



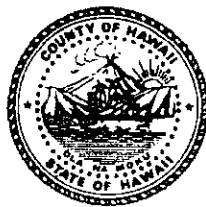
BJ LEITHEAD-TODD
Planning Director

LN/MM:mm
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Enclosures: AFDA document/Exhibit A
AFDA document instruction sheet

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

William P. Kenoi
Mayor



BJ Leithead Todd
Director

Margaret K. Masunaga
Deputy

West Hawai'i Office
74-5044 Ane Keohokalole Hwy
Kailua-Kona, Hawai'i 96740
Phone (808) 323-4770
Fax (808) 327-3563

County of Hawai'i PLANNING DEPARTMENT

East Hawai'i Office
101 Pauahi Street, Suite 3
Hilo, Hawai'i 96720
Phone (808) 961-8288
Fax (808) 961-8742

March 5, 2013

Mr. and Mrs. Milton and Carol Hughes-Okada
P.O. Box 11292
Hilo, HI 96721

Dear Mr. and Mrs. Hughes-Okada:

SUBJECT: Cancellation of Additional Farm Dwelling Agreement
AFDA: FDA-09-000256
Applicant: Milton and Carol Hughes-Okada
Owners: Milton H. and Carol K. Hughes-Okada
Tax Map Key: (3) 2-6-032:016

This is in response to your letter received in our office on February 27, 2013 regarding the status of a previously approved Additional Farm Dwelling Agreement (AFDA) for the subject property. Approval of AFDA number FDA-09-000256 was granted on October 21, 2009, and the agreement document was recorded with the State of Hawai'i Bureau of Conveyances on March 29, 2010 as document number 2010-040992.

You indicated in your letter that you have not moved forward towards building an Additional Farm Dwelling as you intended. Further, no Building Permits were obtained for the additional farm dwelling prior to the deadline date of October 21, 2011. In light of this information, the Additional Farm Dwelling Agreement is deemed null and void.

Per your request, we are emailing a copy of this letter, along with a "Cancellation of Farm Dwelling Agreement" for the AFDA, to Tracy Yamaguchi of First American Title Company.

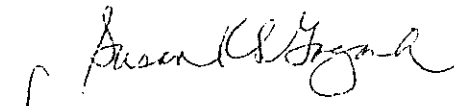
The Agreement document must be signed, notarized and returned to this office for signature by the Planning Director. Please be sure that all of the information in the document is correct. If any changes need to be made, please do so in black ink and have those changes initialed by the notary.

It is our understanding that Ms. Yamaguchi will submit the document to the Bureau of Conveyances for recordation, and she will return a copy of the recorded document to this department.

Mr. Richard Alderson
Page 2
March 6, 2013

Should you have further questions, please feel free to contact Jonathan Holmes of this office at (808) 961-8288 or jholmes@hawaiicounty.gov.

Sincerely,


BJ LEITHEAD-TODD
Planning Director

JH/KWR:nci
P:\Admin Permits Division\AFDA\2013\Cancellation\26032016Hughes-OkadaCancellation.doc

Enclosure: Cancellation of Additional Farm Dwelling Agreement

Cc: Tracy Yamaguchi (via email: tyamaguchi@firstam.com)

AFTER RECORDATION, RETURN BY MAIL TO:

Planning Department
County of Hawai'i
101 Pauahi Street, Suite 3
Hilo, Hawai'i 96720

TITLE OF DOCUMENT:

**CANCELLATION OF ADDITIONAL FARM DWELLING AGREEMENT
(FDA-09-000256)**

PARTIES TO DOCUMENT:

FIRST PARTY: MILTON H. AND CAROL K. HUGHES-OKADA

SECOND PARTY: COUNTY OF HAWAII

PROPERTY DESCRIPTION:

TMK: (3) 2-6-032:016

CANCELLATION OF AGREEMENT

THIS CANCELLATION OF AGREEMENT, made and executed this _____ day of _____, 2013, by and between **MILTON H. AND CAROL K. HUGHES-OKADA**, herein called the "First Party," whose mailing address is P. O. Box 11292, Hilo , HI 96721, and the **COUNTY OF HAWAI'I**, herein called the "Second Party,"

WITNESSETH

WHEREAS, on March 24, 2010 an agreement was entered into by and between the First Party and the Second Party whereby the First Party was authorized to construct an additional farm dwelling (being the second dwelling) on the property described as Tax Map Key (3) 2-6-032:016; and

WHEREAS, the subject area is zoned Agricultural (A-20a) by the County of Hawai'i and classified Agricultural by the State Land Use Commission; and

WHEREAS, the agreement to construct said improvements was duly recorded with the State of Hawai'i Bureau of Conveyances as Document Number 2010-040992; and

WHEREAS, the agreement required that a Building Permit for the additional farm dwelling be obtained by October 21, 2011; and

WHEREAS, the First Party and the Second Party agree that execution of said agreement should be cancelled as there is no longer any valid, compelling reason for it because no Building Permit was obtained for the additional farm dwelling by the deadline date of October 21, 2011.

NOW, THEREFORE, in consideration of the above recitals and the conditions and covenants contained therein, the parties agree as follows:

The Second Party agrees that the agreement dated March 24, 2010, recorded at the State of Hawai'i Bureau of Conveyances as Document Number 2010-040992, between the First Party and the Second Party is no longer applicable and that the agreement is hereby declared null and void.

The Second Party agrees that the agreement dated March 24, 2010 no longer constitutes covenants or encumbrances running with the land as it relates to Tax Map Key (3) 2-6-032:016.

The First Party agrees to pay for all of the necessary costs and expenditures to record this Cancellation of Agreement.

IT IS MUTUALLY AGREED BY AND BETWEEN the parties that if any additional documents are necessary that they will execute same in order that the agreement dated March 24, 2010 no longer constitutes an encumbrance on Tax Map Key (3) 2-6-032:016.

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

FIRST PARTY:

MILTON H. HUGHES-OKADA, Legal Owner

CAROL K. HUGHES-OKADA, Legal Owner

SECOND PARTY:

BJ LEITHEAD TODD, Planning Director
County of Hawai'i Planning Department

STATE OF HAWAII)
) SS:
COUNTY OF HAWAII)

On this _____ day of _____ 2013, before me personally appeared **MILTON H. AND CAROL K. HUGHES-OKADA** 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 Hawaii

My commission expires: _____

STATE OF HAWAII)
) SS:
COUNTY OF HAWAII)

On this _____ day of _____, 2013 before me personally appeared **BJ LEITHEAD TODD**, to me personally known, who, being by me duly sworn, did say that she is the Director of the Planning Department of the County of Hawai'i; and that the Planning Department of the County of Hawai'i has no corporate seal; and that the instrument was signed on behalf of the Planning Department of the County of Hawai'i, a governmental agency, and said **BJ LEITHEAD TODD**, acknowledged the instrument to be the free act and deed of said Planning Department, County of Hawai'i.

Cheryl T. Torrison
Notary Public, State of Hawai'i

My commission expires: _____