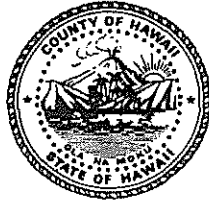


William P. Kenoi
Mayor



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

February 2, 2010

Mr. Stanley E. Lyons
87-831 Kaohe Mauka Place
Captain Cook, HI 96704

Dear Mr. Lyons:

SUBJECT: Additional Farm Dwelling Agreement Application (FDA-09-000263)
Applicants: Stanley E. Lyons
Owners: Stanley E. Lyons and Kitty L. Lyons
State Land Use: Agriculture
County Zoning: Agricultural (A-5a)
Land Area: 5.007 Acres
TMK: (3) 8-7-008:057

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 income-producing agricultural activities:

FEB 02 2010

Mr. Stanley E. Lyons
February 2, 2010
Page 2

- (a) Ongoing agricultural activities include the following:
 1. Propagation, cultivation and annual sales of approximately 10,000 coffee tree seedlings in a 30' x 60' greenhouse within an approximately 1 acre portion of the site;
 - (b) Proposed agricultural activities include the following, planned for completion prior to December 31, 2011:
 1. Expansion of coffee seedling nursery with an additional greenhouse of 30' x 40' for propagation, cultivation and annual sales of an additional 7,000 coffee tree seedlings for a total annual production of approximately 17,000 coffee tree seedlings.
 2. Planting and maintenance of 50 coffee trees for seed stock production.
 3. Expansion area, including proposed farm dwelling, to cover approximately 1.5 additional acres of the subject property.
 - (c) The labor man-hours for the above existing and proposed activities are projected to average, on an annual basis, sixty-two (62) or more hours per week.
4. Evidence of existing engagement in agricultural productivity in the form of agricultural operating expenses, product sales receipts and a copy of the General Excise Tax License for "Malamalama Farms, LLC"[sic] has also been presented. The State Department of Commerce and Consumer Affairs, Business Registration Division, lists the existence of Malamalama Farm, LCC and Stan Lyons as Manager.
 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.** (emphases added)

Mr. Stanley E. Lyons
February 2, 2010
Page 3

2. The subject lot was created by Subdivision No. 7126 approved June 18, 1999, 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.
4. In addition, the following agencies have submitted their comments as stated below:

(a) Department of Water Supply (Letter dated January 15, 2010; COR-10-059921):

“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 January 22, 2010; COR-10-060146):

“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.”

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.

Mr. Stanley E. Lyons
February 2, 2010
Page 4

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. 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 \$30.00 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.
4. 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.
5. 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 their lessees and their successors in interest) 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.
6. The First Party shall allow the Second Party or its representative to inspect the farm from time to time upon reasonable prior notice.
7. **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 February 2, 2012.** Failure to secure a building permit for this additional farm dwelling on or before February 2, 2012 may cause the Director to initiate proceedings to invalidate the AFDA.

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.

Mr. Stanley E. Lyons
February 2, 2010
Page 5

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.

Should you have any questions, 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

AFTER RECORDATION, RETURN BY MAIL TO:

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

TITLE OF DOCUMENT:

ADDITIONAL FARM DWELLING AGREEMENT

PARTIES TO DOCUMENT:

FIRST PARTY: STANLEY E. LYONS and KITTY L. LYONS

SECOND PARTY: COUNTY OF HAWAII

PROPERTY DESCRIPTION:

TMK: (3) 8-7-008:057

ADDITIONAL FARM DWELLING AGREEMENT

THIS AGREEMENT made and executed this _____ day of _____, 2010, by and between **STANLEY E. LYONS and KITTY L. LYONS**, herein called the "First Party," whose mailing address is 87-831 Kaohe Mauka Place, Captain Cook, HI 96704, and the **COUNTY OF HAWAII**, herein called the "Second Party."

IT IS HEREBY AGREED that the First Party may construct a second farm dwelling located on the property described by Tax Map Key (3) 8-7-008:057 situated within the State Land Use Agricultural district and zoned Agricultural (A-5a) 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 (which will be the second farm dwelling permitted on the Property) 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 and County laws and rules and regulations change to authorize said farm dwelling, upon request of the First Party, 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 may impose a fine of not more than \$5,000 for violation of Section 205-4.5, Hawaii Revised Statutes. If the violation is not corrected within six months of such citation and the violation continues, a citation for a new and separate violation may be imposed. There shall be a fine of not more than \$5,000 for any additional violation. The Second Party may also impose fines for any violation of Chapter 25, Hawaii County Code, as amended, in accordance with the procedures and fine schedule outlined in Division 3, Article 2, 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 Agricultural Land Use 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.

FIRST PARTY:

STANLEY E. LYONS, Legal Owner

KITTY L. LYONS, Legal Owner

SECOND PARTY:

BJ LEITHEAD TODD, Planning Director
County of Hawaii Planning Department

STATE OF HAWAII)
) SS.
COUNTY OF HAWAII)

On this _____ day of _____, 2010 before me personally
appeared **STANLEY E. LYONS and KITTY L. LYONS**, 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 _____, 2010 before me personally appeared **BJ LEITHEAD TODD**, to me personally known, who, being by me duly sworn, did say that she 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 BJ Leithead Todd acknowledged the instrument to be the free act and deed of said Planning Department, County of Hawaii.

CATHY T. CORREIA
Notary Public, State of Hawaii

Notary Public, Third Circuit, State of Hawai'i
My Commission expires: 10/13/2010