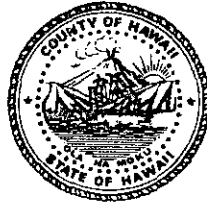


William P. Kenoi  
Mayor



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

June 22, 2010

Mr. Vernon M. Makino Trust  
HCR-1 Box 4198  
Keaau, HI 96749

Dear Mr. Vernon M. Makino:

**SUBJECT: Additional Farm Dwelling Agreement (FDA-10-000270)**  
**Applicant: Vernon M. Makino Trust**  
**Land Owner: Vernon M. Makino Trust**  
**State Land Use: Agricultural**  
**County Zoning: A-1a (Agricultural, minimum building site of one acre)**  
**Land Area: 1.00 Acre**  
**Tax Map Key: (3) 1-5-036:112**

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 existing income producing agricultural and livestock activities:
  - a. On this subject property, ongoing agricultural activities include the follows:
    - i. The activity involves the farming of approximately forty (40) chickens;

- ii. Maintaining a taro patch on 800 square feet of land;
  - iii. Maintaining 100 ti leaf plants, three lychee trees, three citrus fruit trees, four macadamia nut trees, one beehive, several pink/red/torch ginger plants
  - iv. Approximately 8-10 or more (eight to ten or more) hours per week are required for operating 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 prior to June 4, 1976 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) memorandum dated June 14, 2010:

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

Please be informed that an existing 5/8-inch meter serves the first dwelling 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  $\frac{5}{8}$ -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 that the Department cannot provide service to the proposed 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.

Further, as the applicant indicates that there is existing agricultural activity within the subject parcel, a reduced pressure type backflow prevention assembly must be installed within five (5) feet of the existing meter on private property. The installation of the backflow prevention assembly must be inspected and approved by the Department. A copy of the Department's backflow prevention handout will be sent to the applicant to help them understand this requirement.

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

b. Department of Health (DOH) memorandum dated May 19, 2010:

"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 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: <http://hawaii.gov/health/environmental/env-planning/landuse/landuse.html>. Any comments specifically applicable to this project should be adhered to.

The same website also features a Healthy Community Design Smart Growth Checklist (Checklist) created by Built Environment Working Group (BEWG) of the Hawaii State Department of Health. The BEWG recommends that state and county planning departments, developers, planners, engineers and other interested parties apply the healthy built environment principles in the Checklist whenever they plan or review new developments or redevelopments projects. We also ask you to share this list with others to increase community awareness on healthy community design.”

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. The Department of Water Supply has determined that a County approved water system is not available to support the AFD. An Additional Farm Dwelling that is not served by an approved water system may be permitted to use a water catchment system in an area that receives an annual rainfall of at least eighty (80) inches of rain per year. A 9,000 gallon water catchment system for drinking and fire fighting purposes will be required for the AFD.
8. 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 June 22, 2012 may cause the Director to initiate proceedings to invalidate the AFDA.

Vernon M. Makino Trust

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June 22, 2010

Please feel free to contact Jonathan Holmes of this office at (808)961-8288 should you have any further questions and/or concerns.

Sincerely,



B. LEITHEAD TODD  
Planning Director

JRH/shg

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Enclosures: AFDA document  
AFDA document instruction sheet

xc: Mr. Milton Pavao, DWS  
Mr. Mike McCall, RPT  
Mr. Newton Inouye, DOH