

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

August 26, 2010

Mr. Brett Kayzar
Mr. David Kopec
P.O. Box 5349
Hilo, HI 96720

Dear Mr. Kayzar and Mr. Kopec:

SUBJECT: **Additional Farm Dwelling Agreement (FDA-10-000279)**
Applicant: **Brett Kayzar and David Kopec**
Land Owner: **Brett Kayzar and David Kopec**
State Land Use: **Agricultural**
County Zoning: **A-20a (Agricultural, minimum building
site of twenty acres)**
Land Area: **1.869 acres**
Tax Map Key: **(3) 3-1-001:051**

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 and proposed income producing agricultural activities:
 - a. Ongoing agricultural activities for the Palua'K Plantation Company include the following:
 - i. Crop farming of guava and coconut trees;
 - ii. Approximately 8-16 or more hours per week are required for operating the

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farm.

- b. Proposed agricultural activities includes the following:
 - i. Expansion of existing guava and coconut trees;
 - ii. Maintain the prepared land for the new crops;
 - iii. Growing of lychee, banana, passion fruit and other various citrus trees;
 - iv. Approximately 100 or more hours per week will be required for operating the farm and frontage road-side stand with 2-3 full-time staff
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 7550) approved on May 15, 2002, 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) memorandum dated July 12, 2010:

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

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Please be informed that the subject parcel is not within the Department's service limits. The nearest adequate point of connection is from an existing 6-inch waterline within Old Mamalahoa Highway in Hakalau Village, approximately 1.2 miles from the property.

We have no objection to the applicant's request as the subject parcel is not within the Department's existing service limits. Further, the applicant has indicated a proposed well on the attached plans.

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 June 24, 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.

Dispensing site locations and food preparation areas would need to meet the requirements of Chapter 12, Food Establishment Sanitation Code. The applicant may call Ph. 933-0917 to discuss the content of this communication.

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 assessments to identify and address elevated soil arsenic levels prior to finalizing development plans for the properties.

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

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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 and proposed 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


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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 AFDA.

8. The subject property is situated within the Special Management Area (SMA). A Special Management Area Use Permit Assessment Application must be approved by the Planning Director prior to our office signing off on the Building Permit Application.
9. 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 August 26, 2012 may cause the Director to initiate proceedings to invalidate the AFDA.

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

Sincerely,


TODD BILLETHEAD
Planning Director

JRH/shg

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Enclosures: AFDA document
AFDA document instruction sheet

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

Additional Farm Dwelling Agreement Instructions

Attached is the Additional Farm Dwelling Agreement form for your approved application. It is important that you follow these instructions in the completion of the form. Failure to complete and submit a properly completed agreement form to the Planning Department for recordation with the Bureau of Conveyances may cause your Additional Farm Dwelling Agreement to be rejected by the Bureau and delay approval of your application for a building permit for the additional farm dwelling. Building permit applications for additional farm dwellings will not be approved by the Planning Department until the AFDA form and the required submittals specified below have been returned to the Planning Department. You may make as many copies of the AFDA document for your records as necessary. A copy of the final recordation page will be available from the Planning Department when received back from the Bureau of Conveyances upon request.

1. All persons in the "First Party" must sign before a Public Notary in the appropriate location on the signature page (Page 4). Photocopies of pages 4 and 5 may be made and sent to any person(s) listed whose notarized signatures are required and then attached to the agreement document along with the original signature page. Facsimiles or FAX copies of signatures will not be accepted.

Note: All signatures must be the same as the typed name. Therefore, if John L. Doe is the name typed the signature must also be John L. Doe. Signing John Doe or Jonathan L. Doe will cause the agreement document to be rejected by the Bureau of Conveyances for recordation purposes.

2. Enclose a check or money order in the amount of \$30.00, made out to the Bureau of Conveyance for the recordation fee.
3. Return the **original** completed AFDA document with all required signatures and the recordation fee payment to the Planning Department for the Director's signature and submittal to the Bureau of Conveyances for recordation.