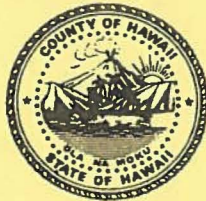


William P. Kenoi
Mayor



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, 2010

Mr. Melvin Kealoha Ayau and
Ms. Thelma Camacho Ayau
17-611 Paahana Street
Keaau, Hawaii 96749

Dear Mr. and Mrs. Ayau:

SUBJECT: **Additional Farm Dwelling Agreement (FDA-10-000282)**
Applicant: **Melvin Kealoha Ayau and
Thelma Camacho Ayau**
Land Owner: **Melvin Kealoha Ayau and Thelma
Camacho Ayau, Trustees of the Melvin
Kealoha Ayau Trust and the Thelma
Camacho Ayau Trust**
State Land Use: **Agricultural**
County Zoning: **A-1a**
Land Area: **1.033 Acres**
Tax Map Key: **(3) 1-7-030:047**

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:

- i. The growing of fruit and nut trees;
 - ii. Approximately 20 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.**
2. The subject lot was created by subdivision (SUB 5332) approved on December 9, 1985, 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)(Letter dated October 14, 2010):

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

Please be informed that the subject parcel is currently served by a 5/8-inch meter, which is adequate for only one dwelling at an average daily usage of 400 gallons. Inasmuch as this application is proposing an additional dwelling, the installation of a separate 5/8-inch meter is required. Water can be made

available from the Department's existing 8-inch waterline within Paahana Street, fronting the subject parcel.

Therefore, the Department has no objections to the proposed application, subject to the applicant understanding and accepting the following conditions:

1. Installation, by the Department of Water Supply, of a second 1-inch service lateral to service a 5/8-inch meter, which shall be restricted to an average daily flow of 400 gallons.
2. Remittance of the following charges, which are subject to change, to our Customer Service Section:

FACILITIES CHARGES (FC):

2 ND service to the parcel	\$5,500.00
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SERVICE LATERAL INSTALLATION CHARGE:

<u>Install one meter on Paahana Street, a County road</u>	<u>\$3,000.00</u>
Total (Subject to Change)	\$8,500.00

3. The installation of an approved backflow prevention assembly (reduced pressure type) will be required if there is existing or proposed agricultural activity on the property. The installation must be done by a licensed contractor on the applicant's property within five (5) feet of the meter for each service. The installation of the backflow prevention assembly must be inspected and approved by the Department before water service can be granted. A copy of our backflow prevention handout is being forwarded to the applicant to help them understand this requirement.

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

- b. Department of Health (DOH)(Memorandum dated October 14, 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.

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 properties.

We recommend that you review all of the Standard Comments on our website: www.hawaii.gov/health/environmental/env-planning/landuse/landuse.htm. 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 redevelopment 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.

Mr. and Mrs. Ayau
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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, 2012 may cause the Director to initiate proceedings to invalidate the AFDA.

Please feel free to contact Jonathan Holmes of this office at 961-8288 should you have other questions and/or concerns.

Sincerely,



BJ LEITHEAD-TODD
Planning Director

JRH/MM:mm

O:\AFDA\AFDALHN\Approvals\AyauTrust-Aprvl.doc

Enclosures: AFDA document
AFDA document instruction sheet
Return envelope

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