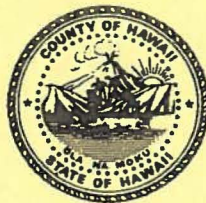


William P. Kenoi
Mayor



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

December 7, 2010

Mr. Richard Denholm
12-1093 Kaimu-Makena Homestead Road
Pahoa, HI 96778

Dear Mr. Denholm:

SUBJECT: Additional Farm Dwelling Agreement (FDA-10-000284)
Applicant: Richard Denholm
**Land Owner: Merrill Grant Everett and
Deborah Ann Everett**
State Land Use: Agricultural
**County Zoning: A-3a (Agricultural, minimum building
site of three acres)**
Land Area: 5.677 acres
Tax Map Key: (3) 1-2-006:082

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 Makena Gardens Farm include the following:
 - i. Maintaining the bee hives;
 - ii. Weedwacking, mowing, pruning, weeding, fertilizing, harvesting,

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- iii. Maintaining the tractor;
 - iv. Maintaining the chickens;
 - v. Currently 31.15 or more hours per week are required for operating the farm.
- b. Proposed agricultural activities includes the following:
- i. Expanding the existing farm;
 - ii. Pruning, weeding, fertilizing, harvesting, spraying and watering the vegetables and fruits;
 - iii. Approximately 17.5 or more hours will be 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. Subdivision #785 was approved on July 6, 1954.
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.

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4. In addition, the following agencies have submitted their comments as stated below:

a. Department of Water Supply (DWS) memorandum dated November 24, 2010:

“We have reviewed the subject application.

Please be informed that the subject parcel does not have an existing water service with the Department as the parcel is beyond the service limits of the Department’s existing water system.

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 November 4, 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:

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<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

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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 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 minimum 9,000 gallon water catchment system for domestic consumption 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 December 7, 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,



BJ 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