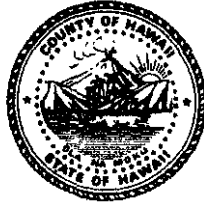


William P. Kenoi
Mayor



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

July 13, 2011

Ms. Anne Strawbridge, Manager
Pa Ka Makani Farm, LLC
988 Baneswood Dr.
Kennett Square, PA 19348

Dear Ms. Strawbridge:

Farm Dwelling Agreement Application (FDA-11-000303)

Applicant:	Pa Ka Makani Farm, LLC
Owner:	Pa Ka Makani Farm, LLC
State Land Use District:	Agricultural
County Zoning District:	Agricultural (A-20a)
Land Area:	20.0 acres
TMK:	5-4-008:052 (Lot 2-C-2)

Pursuant to the requirements of Planning Department Variance No. VAR 05-040 and Planning Department Rule 13, Farm Dwellings, we have reviewed your request for a 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 farm dwelling is needed in connection with the agricultural productivity or farming operation. Your farm plan includes the following ongoing income-producing agricultural activities:
 - (a) Existing, ongoing income-producing agricultural activities: None.

- (b) Proposed income-producing agricultural activities include the following:
1. Organic livestock production: breeding and raising purebred St. Croix hair sheep and purebred Nubian goats in an intensive rotational cell grazing system comprising a total of approximately 11.4 acres (8.3 acres of the "tableland" portion of the site and 3.1 acres of the "gulch" portion of the site) and 1.7 miles of fencing.
 2. Seasonal sales of raised livestock at an average rate of sixteen lambs (sheep) and six kids (goats) per year for a projected average annual gross income of \$2,750.
 3. Establishment and maintenance of "shelterbelts" over approximately 2.2 acres of the "tableland" portion of the site and 1 mile of fencing, for the purposes of livestock shelter, production of a portion of the livestock feed which will supplement pasturage and imported feed, farm site erosion control and other environmental benefits.
- (c) The labor man-hours for the above proposed activities are projected to average, on an annual basis, twenty (20) or more hours per week.

4. Evidence of engagement in agricultural productivity in the form of a General Excise Tax License No. W43928683-01 in the name of Pa Ka Makani Farm, LLC has also been presented.
5. The applicant's commitment to the farm plan will be shown in the form of the enclosed Farm Dwelling Agreement affidavit, to be notarized and submitted for recordation with the Bureau of Conveyances, which states that the farm 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)
2. The subject lot was created by Subdivision No. SUB-04-000234 on April 3, 2007, which, pursuant to HRS §205-4.5(b), requires a dwelling on the lot to be a farm dwelling.

3. Conditions of Variance No. VAR 05-040, issued prior to and in contemplation of SUB-04-000234 which created Lot Nos. 2-C-1 and 2-C-2, include the requirements:
 - (i) No more than one dwelling unit (that is, a farm dwelling) shall be permitted on the subject property (Lot No. 2-C-2) or the other parcel (Lot No. 2-C-1) created by this subdivision, and
 - (ii) The proposed farm dwelling shall first meet the requirements for an "additional farm dwelling," which requirements include entering into a Farm Dwelling Agreement with the County of Hawai'i Planning Department and recording such Agreement at the State Bureau of Conveyances prior to consideration of a building permit application for the one allowable farm dwelling.
4. 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.
5. In addition, the following agencies have submitted their comments as referenced below:
 - (a) Department of Water Supply by letter dated June 29, 2011; our Correspondence No. COR-11-07249, a copy of which is attached hereto as Exhibit "1" and incorporated herein by reference; and

Department of Health by Memorandum dated June 27, 2011, our Correspondence No. COR-11-072445, a copy of which is attached hereto as Exhibit "2" and incorporated herein by reference.

Decision:

In view of the above, your request to construct a farm dwelling is approved subject to the following conditions:

1. The 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.
2. The owner, occupants of the farm dwelling and their farm employees shall comply with all conditions imposed in Variance Permit No. VAR 05-040.

Ms. Anne Strawbridge, Manager
Pa Ka Makani, LLC
July 13, 2011
Page 4

3. The agreement shall run with the land and apply to all persons who may, now or in the future, use or occupy the farm dwelling.
4. The enclosed Farm Dwelling Agreement (“FDA”) 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 Farm Dwelling Agreement Instructions. The Planning Department will not approve a building permit application for the farm dwelling until the FDA document with all required attachments has been recorded at the Bureau of Conveyances.
5. 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.
6. Your Farm Dwelling Agreement has been approved based on 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 farm dwelling.** The Second Party (County of Hawaii Planning Department) of the Agreement may allow modifications for good cause shown by First Party.
7. The First Party shall allow the Second Party or its representative to inspect the farm from time to time upon reasonable prior notice.
8. **The First Party is required to secure a building permit from the Department of Public Works, Building Division, for the construction of the farm dwelling on or before July 13, 2013.** Failure to secure a building permit for this farm dwelling on or before July 13, 2013 may cause the Director to initiate proceedings to invalidate the FDA.

Ms. Anne Strawbridge, Manager
Pa Ka Makani, LLC
July 13, 2011
Page 5

Should you have any questions, please contact Keola Childs of our West Hawai'i office at 323-4770.

Sincerely,


BJ LEITHEAD TODD
Planning Director

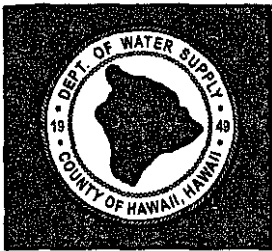
CKC:ckc

K:\Staff\Childs\AFDA\AFDA Corr\Approval\AFDAapr-54008052 Pa Ka Makani LLC.doc

Attachments: Exhibit "1" – Letter dated June 9, 2011 from County Dept. of Water Supply
Exhibit "2" – Memorandum dated June 27, 2011 from State Dept. of Health

Enclosures: FDA document
FDA document instruction sheet

xc: Mr. Milton Pavao, DWS
Mr. Mike McCall, RPT
Planning Department – West Hawai'i Office



DEPARTMENT OF WATER SUPPLY • COUNTY OF HAWAII

345 KEKŪANAŌ'A STREET, SUITE 20 • HILO, HAWAII 96720

TELEPHONE (808) 961-8050 • FAX (808) 961-8657

June 29, 2011

TO: Ms. BJ Leithead-Todd, Planning Director
Planning Department

FROM: Milton D. Pavao, Manager-Chief Engineer

SUBJECT: **ADDITIONAL FARM DWELLING AGREEMENT APPLICATION (COR 11-071415)
APPLICANT – PA KA MAKANI FARM, LLC
TAX MAP KEY 5-4-008:052**

RECEIVED
PLANNING DEPARTMENT
JUL 1 2011

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

Please be informed that the subject property is not within the Department's existing service limits. The nearest adequate point of connection is from an existing 6-inch waterline within Honomaka'u Road, approximately 3,040 feet from the subject property.

Please note that the applicant's farm plan shows an existing County water meter fronting the property, yet our records do not show that the subject parcel has an existing service.

For your information, we have no objection to the applicant's proposed use of a private rainwater catchment system to provide water service for the proposed additional farm dwelling.

Should there be any questions, please contact Mr. Finn McCall of our Water Resources and Planning Branch at 961-8070, extension 255.

Sincerely yours,

Milton D. Pavao, P.E.
Manager-Chief Engineer

FM:dfg

copy – Pa Ka Makani Farm, LLC

EXHIBIT "1"



2011 JUN 27 PM 1:55



STATE OF HAWAII
DEPARTMENT OF HEALTH
P.O. BOX 916
HILO, HAWAII 96721-0916

MEMORANDUM

DATE: June 27, 2011

TO: Bobby Jean Leithead Todd
Planning Director, County of Hawaii

FROM: Newton Inouye *NI*
Acting District Environmental Health Program Chief

SUBJECT: Additional Farm Dwelling Application (COR-11-071415)
Applicant: Pa Ka Makani Farm, LLC
Owner: Pa Ka Makani Farm, LLC
State Land Use District: Agricultural
County Zoning District: Agricultural (A-20a)
Land Area: 20.0 acres
TMK: (3) 5-4-008:052 (Lot 2-C-2)

The Department of Health (DOH), Clean Water Branch (CWB), acknowledges receipt of the subject document on June 13, 2011. The CWB has reviewed the limited information contained in the subject document and offers the following comments:

1. The Army Corps of Engineers should be contacted at (808) 438-9258 for this project. Pursuant to Federal Water Pollution Control Act (commonly known as the "Clean Water Act" (CWA)), Paragraph 401(a)(1), a Section 401 Water Quality Certification (WQC) is required for "[a]ny applicant for Federal license or permit to conduct any activity including, but not limited to, the construction or operation of facilities, which may result in any discharge into the navigable waters...". The term "discharge" is defined in CWA, Subsections 502(16), 502(12), and 502(6); Title 40, Code of Federal Regulations, Section 122.2, and Hawaii Administrative Rules (HAR), Chapter 11-54.
2. In accordance with HAR, Sections 11-55-04 and 11-55-34.05, the Director of Health may require the submittal of an individual permit application or a Notice of Intent (NOI) for general permit coverage authorized under the National Pollutant Discharge Elimination System (NPDES).
 - a. An application for an NPDES individual permit is to be submitted at least 180 days before the commencement of the respective activities.

EXHIBIT "2"

SCANNED
07/04/11
By: _____

NPDES application forms may also be picked up at our office or downloaded from our website at:

<http://www.hawaii.gov/health/environmental/water/cleanwater/forms/indy-index.html>.

- b. An NOI to be covered by an NPDES general permit is to be submitted at least 30 days before the commencement of the respective activity. A separate NOI is needed for coverage under each NPDES general permit. The NOI forms may be picked up at our office or downloaded from our website at:
- <http://www.hawaii.gov/health/environmental/water/cleanwater/forms/genl-index.html>.
- i. Storm water associated with industrial activities, as defined in Title 40, Code of Federal Regulations, Sections 122.26(b)(14)(i) through 122.26(b)(14)(ix) and 122.26(b)(14)(xi). [HAR, Chapter 11-55, Appendix B]
 - ii. Construction activities, including clearing, grading, and excavation, that result in the disturbance of equal to or greater than one (1) acre of total land area. The total land area includes a contiguous area where multiple separate and distinct construction activities may be taking place at different times on different schedules under a larger common plan of development or sale. An NPDES permit is required before the commencement of the construction activities. [HAR, Chapter 11-55, Appendix C]
 - iii. Discharges of treated effluent from leaking underground storage tank remedial activities. [HAR, Chapter 11-55, Appendix D]
 - iv. Discharges of once through cooling water less than one (1) million gallons per day. [HAR, Chapter 11-55, Appendix E]
 - v. Discharges of hydrotesting water. [HAR, Chapter 11-55, Appendix F]
 - vi. Discharges of construction dewatering effluent. [HAR, Chapter 11-55, Appendix G]
 - vii. Discharges of treated effluent from petroleum bulk stations and terminals. [HAR, Chapter 11-55, Appendix H]
 - viii. Discharges of treated effluent from well drilling activities. [HAR, Chapter 11-55, Appendix I]
 - ix. Discharges of treated effluent from recycled water distribution systems. [HAR, Chapter 11-55, Appendix J]

- x. Discharges of storm water from a small municipal separate storm sewer system. [HAR, Chapter 11-55, Appendix K]
 - xi. Discharges of circulation water from decorative ponds or tanks. [HAR, Chapter 11-55, Appendix L]
3. In accordance with HAR, Section 11-55-38, the applicant for an NPDES permit is required to either submit a copy of the new NOI or NPDES permit application to the State Department of Land and Natural Resources, State Historic Preservation Division (SHPD), or demonstrate to the satisfaction of the DOH that the project, activity, or site covered by the NOI or application has been or is being reviewed by SHPD. If applicable, please submit a copy of the request for review by SHPD or SHPD's determination letter for the project.
 4. Any discharges related to project construction or operation activities, with or without a Section 401 WQC or NPDES permit coverage, shall comply with the applicable State Water Quality Standards as specified in HAR, Chapter 11-54.

Hawaii Revised Statutes, Subsection 342D-50(a) requires that “[n]o person, including any public body, shall discharge any water pollutants into state waters, or cause or allow any water pollutant to enter state waters except in compliance with this chapter, rules adopted pursuant to this chapter, or a permit or variance issued by the director.”

If you have any questions, please contact Mr. Alec Wong, Supervisor of the Engineering Section, CWB, at (808) 586-4309.

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.

The applicant would need to meet the requirements of our Department of Health Air Pollution Rules, Chapter 60.1, Title 11, State of Hawaii for fugitive dust control. If there is need to discuss these requirements, please contact our Clean Air Branch staff at Ph. 933-0401.

Construction activities must comply with the provisions of Hawaii Administrative Rules, Chapter 11-46, “Community Noise Control.”

1. The contractor must obtain a noise permit if the noise levels from the construction activities are expected to exceed the allowable levels of the rules.

BJ Leithead Todd

June 27, 2011

Page 4 of 4

2. Construction equipment and on-site vehicles requiring an exhaust of gas or air must be equipped with mufflers.
3. The contractor must comply with the requirements pertaining to construction activities as specified in the rules and the conditions issued with the permit.

Should there be any questions on this matter, please contact the Department of Health at 933-0917.

WORD:FARM COR-11-071415.my

Farm Dwelling Agreement Instructions

Attached is the Farm Dwelling Agreement (FDA) form for your approved application. **It is important that you follow these instructions in completing the FDA form.** You may make as many extra copies of the FDA document for your records as necessary. Failure to submit a properly completed agreement form for recordation with the Bureau of Conveyances together with the required recordation fee to the Planning Department may cause your 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 farm dwellings which are conditionally permitted by FDA will not be approved by the Planning Department until the FDA document has been recorded by and returned from the Bureau of Conveyances to the Planning Department. A copy of the certified recordation page of the FDA document will be available upon request from the Planning Department when received back from the Bureau of Conveyances.

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 the signature and notary pages may be made, signed separately by any of the persons in the "First Party," and then attached to the **original** FDA document behind the original signature and notary pages. 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.

For Corporations, Partnerships, Limited Liability Companies, etc., print the signer's name and entity title (e.g., president, vice-president, managing partner, managing member, etc.) below the signature line. Be prepared for your notary to require you to bring a document showing you are authorized by that entity to execute this type of legal document. For your convenience, we recommend you ask your notary in advance of your appointment for any such requirement.

2. Please leave the document **undated** (on Page 2), as the Planning Department will date the document when it is signed by the Director. Do not remove any pages from the document or the exhibits thereto. If your notary adds a page to the document, the number of pages printed on the top of the first page should be changed and initialed by the parties.
3. Enclose a check or money order in the amount of **\$30.00**, made out to the **Bureau of Conveyances**, for the Bureau of Conveyances' recordation fee.
4. Return the **original** completed FDA 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.

AFTER RECORDATION, RETURN BY MAIL TO:

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

Total Pages: 16

TITLE OF DOCUMENT:

FARM DWELLING AGREEMENT

PARTIES TO DOCUMENT:

FIRST PARTY: PA KA MAKANI FARM, LLC

SECOND PARTY: COUNTY OF HAWAII

PROPERTY DESCRIPTION:

TMK: (3) 5-4-008:052

FARM DWELLING AGREEMENT

THIS AGREEMENT made and executed this ____ day of _____, 2011, by and between PA KA MAKANI FARM, LLC, hereinafter referred to as the "First Party," whose mailing address is 988 Baneswood Dr., Kennett Square, PA 19348, and the COUNTY OF HAWAII, hereinafter referred to as the "Second Party."

IT IS HEREBY AGREED that the First Party may construct a farm dwelling located on the property described by Tax Map Key (3) 5-4-008:052 situated within the State Land Use Agricultural district and zoned Agricultural (A-20a) (the "Property") 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 (1) farm dwelling is given subject to the following conditions:

1. The 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. This Agreement shall run with the land and apply to all persons who may now or in the future use or occupy the farm dwelling.
3. This Agreement shall include any and all conditions specified in the Farm Dwelling Agreement letter, attached to this Agreement and incorporated herein 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 of Hawai'i and County laws and rules and regulations change to authorize said farm dwelling, upon request of the First Party, its successors, heirs, personal representatives and assigns, 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 shall impose a fine against the First Party, its successors, heirs, personal representatives and assigns, of not more than \$5,000.00 for violation of any provision under section 205-4.5, Hawaii Revised Statutes. If the First Party fails to remove such violation within six months of such citation and the violation continues to exist, the First Party shall be subject to a citation for a new and separate violation. There shall be a fine of not more than \$5,000 for any additional violation. The Second Party may impose fines for any violation of Chapter 25, Hawaii County Code, as amended, in accordance with the procedures and fine schedule outlined in Section 25-2-35 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 Land Use Agricultural 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.

PA KA MAKANI FARM, LLC

By _____

Print Name: _____

Its _____

Legal Owner

FIRST PARTY

COUNTY OF HAWAII

By _____

BJ LEITHEAD TODD

Its Planning Director

SECOND PARTY

STATE OF HAWAI'I)
) SS.
COUNTY OF HAWAI'I)

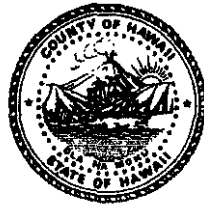
On _____, before me personally appeared BJ Leithead Todd, to me personally known, who, being by me duly sworn, did say that BJ Leithead Todd is the Planning Director of the County of Hawai'i, and that the Planning Department of the County of Hawaii has no corporate seal; and that the instrument was signed 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.

CHERYL T. TORRISON
Notary Public, State of Hawai'i

My Commission Expires: 03-07-2014

NOTARY CERTIFICATION STATEMENT	
Doc. Description:	
Doc. Date: _____ or <input type="checkbox"/> Undated at time of notarization.	
No. of Pages: _____ [including exhibits]	Jurisdiction: Third Circuit
Notary Name: Cheryl T. Torrison	
_____ Notary Signature	_____ Date

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

July 13, 2011

Ms. Anne Strawbridge, Manager
Pa Ka Makani Farm, LLC
988 Baneswood Dr.
Kennett Square, PA 19348

Dear Ms. Strawbridge:

Farm Dwelling Agreement Application (FDA-11-000303)

Applicant:	Pa Ka Makani Farm, LLC
Owner:	Pa Ka Makani Farm, LLC
State Land Use District:	Agricultural
County Zoning District:	Agricultural (A-20a)
Land Area:	20.0 acres
TMK:	<u>5-4-008:052 (Lot 2-C-2)</u>

Pursuant to the requirements of Planning Department Variance No. VAR 05-040 and Planning Department Rule 13, Farm Dwellings, we have reviewed your request for a 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 farm dwelling is needed in connection with the agricultural productivity or farming operation. Your farm plan includes the following ongoing income-producing agricultural activities:
 - (a) Existing, ongoing income-producing agricultural activities: None.

EXHIBIT "A"

Ms. Anne Strawbridge, Manager
Pa Ka Makani, LLC
July 13, 2011
Page 2

- (b) Proposed income-producing agricultural activities include the following:
1. Organic livestock production: breeding and raising purebred St. Croix hair sheep and purebred Nubian goats in an intensive rotational cell grazing system comprising a total of approximately 11.4 acres (8.3 acres of the "tableland" portion of the site and 3.1 acres of the "gulch" portion of the site) and 1.7 miles of fencing.
 2. Seasonal sales of raised livestock at an average rate of sixteen lambs (sheep) and six kids (goats) per year for a projected average annual gross income of \$2,750.
 3. Establishment and maintenance of "shelterbelts" over approximately 2.2 acres of the "tableland" portion of the site and 1 mile of fencing, for the purposes of livestock shelter, production of a portion of the livestock feed which will supplement pasturage and imported feed, farm site erosion control and other environmental benefits.
- (c) The labor man-hours for the above proposed activities are projected to average, on an annual basis, twenty (20) or more hours per week.
4. Evidence of engagement in agricultural productivity in the form of a General Excise Tax License No. W43928683-01 in the name of Pa Ka Makani Farm, LLC has also been presented.
 5. The applicant's commitment to the farm plan will be shown in the form of the enclosed Farm Dwelling Agreement affidavit, to be notarized and submitted for recordation with the Bureau of Conveyances, which states that the farm 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)
2. The subject lot was created by Subdivision No. SUB-04-000234 on April 3, 2007, which, pursuant to HRS §205-4.5(b), requires a dwelling on the lot to be a farm dwelling.

3. Conditions of Variance No. VAR 05-040, issued prior to and in contemplation of SUB-04-000234 which created Lot Nos. 2-C-1 and 2-C-2, include the requirements:
 - (i) No more than one dwelling unit (that is, a farm dwelling) shall be permitted on the subject property (Lot No. 2-C-2) or the other parcel (Lot No. 2-C-1) created by this subdivision, and
 - (ii) The proposed farm dwelling shall first meet the requirements for an "additional farm dwelling," which requirements include entering into a Farm Dwelling Agreement with the County of Hawai'i Planning Department and recording such Agreement at the State Bureau of Conveyances prior to consideration of a building permit application for the one allowable farm dwelling.
4. 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.
5. In addition, the following agencies have submitted their comments as referenced below:
 - (a) Department of Water Supply by letter dated June 29, 2011; our Correspondence No. COR-11-07249, a copy of which is attached hereto as Exhibit "1" and incorporated herein by reference; and

Department of Health by Memorandum dated June 27, 2011, our Correspondence No. COR-11-072445, a copy of which is attached hereto as Exhibit "2" and incorporated herein by reference.

Decision:

In view of the above, your request to construct a farm dwelling is approved subject to the following conditions:

1. The 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.
2. The owner, occupants of the farm dwelling and their farm employees shall comply with all conditions imposed in Variance Permit No. VAR 05-040.

Ms. Anne Strawbridge, Manager
Pa Ka Makani, LLC
July 13, 2011
Page 4

3. The agreement shall run with the land and apply to all persons who may, now or in the future, use or occupy the farm dwelling.
4. The enclosed Farm Dwelling Agreement (“FDA”) 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 Farm Dwelling Agreement Instructions. The Planning Department will not approve a building permit application for the farm dwelling until the FDA document with all required attachments has been recorded at the Bureau of Conveyances.
5. 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.
6. Your Farm Dwelling Agreement has been approved based on 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 farm dwelling.** The Second Party (County of Hawaii Planning Department) of the Agreement may allow modifications for good cause shown by First Party.
7. The First Party shall allow the Second Party or its representative to inspect the farm from time to time upon reasonable prior notice.
8. **The First Party is required to secure a building permit from the Department of Public Works, Building Division, for the construction of the farm dwelling on or before July 13, 2013.** Failure to secure a building permit for this farm dwelling on or before July 13, 2013 may cause the Director to initiate proceedings to invalidate the FDA.

Ms. Anne Strawbridge, Manager
Pa Ka Makani, LLC
July 13, 2011
Page 5

Should you have any questions, please contact Keola Childs of our West Hawai'i office at 323-4770.

Sincerely,


BJ LEITHEAD TODD
Planning Director

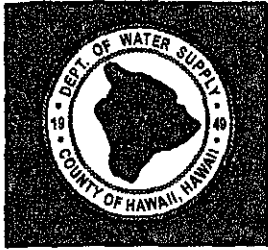
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Attachments: Exhibit "1" – Letter dated June 9, 2011 from County Dept. of Water Supply
Exhibit "2" – Memorandum dated June 27, 2011 from State Dept. of Health

Enclosures: FDA document
FDA document instruction sheet

xc: Mr. Milton Pavao, DWS
Mr. Mike McCall, RPT
Planning Department – West Hawai'i Office



DEPARTMENT OF WATER SUPPLY • COUNTY OF HAWAII

345 KEKŪANAŌ'A STREET, SUITE 20 • HILO, HAWAII 96720

TELEPHONE (808) 961-8050 • FAX (808) 961-8657

June 29, 2011

TO: Ms. BJ Leithead-Todd, Planning Director
Planning Department

FROM: Milton D. Pavao, Manager-Chief Engineer

SUBJECT: **ADDITIONAL FARM DWELLING AGREEMENT APPLICATION (COR 11-071415)
APPLICANT – PA KA MAKANI FARM, LLC
TAX MAP KEY 5-4-008:052**

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

Please be informed that the subject property is not within the Department's existing service limits. The nearest adequate point of connection is from an existing 6-inch waterline within Honomaka'u Road, approximately 3,040 feet from the subject property.

Please note that the applicant's farm plan shows an existing County water meter fronting the property, yet our records do not show that the subject parcel has an existing service.

For your information, we have no objection to the applicant's proposed use of a private rainwater catchment system to provide water service for the proposed additional farm dwelling.

Should there be any questions, please contact Mr. Finn McCall of our Water Resources and Planning Branch at 961-8070, extension 255.

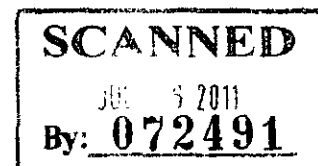
Sincerely yours,

Milton D. Pavao, P.E.
Manager-Chief Engineer

FM:dfg

copy – Pa Ka Makani Farm, LLC

EXHIBIT "1"





PLANNING DEPT EXT

2011 JUN 27 PM 4:55

STATE OF HAWAII
DEPARTMENT OF HEALTH
P.O. BOX 916
HILO, HAWAII 96721-0916

MEMORANDUM

DATE: June 27, 2011

TO: Bobby Jean Leithead Todd
Planning Director, County of Hawaii

FROM: Newton Inouye *NI*
Acting District Environmental Health Program Chief

SUBJECT: Additional Farm Dwelling Application (COR-11-071415)
 Applicant: Pa Ka Makani Farm, LLC
 Owner: Pa Ka Makani Farm, LLC
 State Land Use District: Agricultural
 County Zoning District: Agricultural (A-20a)
 Land Area: 20.0 acres
 TMK: (3) 5-4-008:052 (Lot 2-C-2)

The Department of Health (DOH), Clean Water Branch (CWB), acknowledges receipt of the subject document on June 13, 2011. The CWB has reviewed the limited information contained in the subject document and offers the following comments:

1. The Army Corps of Engineers should be contacted at (808) 438-9258 for this project. Pursuant to Federal Water Pollution Control Act (commonly known as the "Clean Water Act" (CWA)), Paragraph 401(a)(1), a Section 401 Water Quality Certification (WQC) is required for "[a]ny applicant for Federal license or permit to conduct any activity including, but not limited to, the construction or operation of facilities, which may result in any discharge into the navigable waters...". The term "discharge" is defined in CWA, Subsections 502(16), 502(12), and 502(6); Title 40, Code of Federal Regulations, Section 122.2, and Hawaii Administrative Rules (HAR), Chapter 11-54.
2. In accordance with HAR, Sections 11-55-04 and 11-55-34.05, the Director of Health may require the submittal of an individual permit application or a Notice of Intent (NOI) for general permit coverage authorized under the National Pollutant Discharge Elimination System (NPDES).
 - a. An application for an NPDES individual permit is to be submitted at least 180 days before the commencement of the respective activities.

EXHIBIT "2"

SCANNED
07/26/11
By: _____

NPDES application forms may also be picked up at our office or downloaded from our website at:

<http://www.hawaii.gov/health/environmental/water/cleanwater/forms/industry-index.html>.

- b. An NOI to be covered by an NPDES general permit is to be submitted at least 30 days before the commencement of the respective activity. A separate NOI is needed for coverage under each NPDES general permit. The NOI forms may be picked up at our office or downloaded from our website at:
- <http://www.hawaii.gov/health/environmental/water/cleanwater/forms/general-index.html>.
- i. Storm water associated with industrial activities, as defined in Title 40, Code of Federal Regulations, Sections 122.26(b)(14)(i) through 122.26(b)(14)(ix) and 122.26(b)(14)(xi). [HAR, Chapter 11-55, Appendix B]
 - ii. Construction activities, including clearing, grading, and excavation, that result in the disturbance of equal to or greater than one (1) acre of total land area. The total land area includes a contiguous area where multiple separate and distinct construction activities may be taking place at different times on different schedules under a larger common plan of development or sale. An NPDES permit is required before the commencement of the construction activities. [HAR, Chapter 11-55, Appendix C]
 - iii. Discharges of treated effluent from leaking underground storage tank remedial activities. [HAR, Chapter 11-55, Appendix D]
 - iv. Discharges of once through cooling water less than one (1) million gallons per day. [HAR, Chapter 11-55, Appendix E]
 - v. Discharges of hydrotesting water. [HAR, Chapter 11-55, Appendix F]
 - vi. Discharges of construction dewatering effluent. [HAR, Chapter 11-55, Appendix G]
 - vii. Discharges of treated effluent from petroleum bulk stations and terminals. [HAR, Chapter 11-55, Appendix H]
 - viii. Discharges of treated effluent from well drilling activities. [HAR, Chapter 11-55, Appendix I]
 - ix. Discharges of treated effluent from recycled water distribution systems. [HAR, Chapter 11-55, Appendix J]

- x. Discharges of storm water from a small municipal separate storm sewer system. [HAR, Chapter 11-55, Appendix K]
 - xi. Discharges of circulation water from decorative ponds or tanks. [HAR, Chapter 11-55, Appendix L]
3. In accordance with HAR, Section 11-55-38, the applicant for an NPDES permit is required to either submit a copy of the new NOI or NPDES permit application to the State Department of Land and Natural Resources, State Historic Preservation Division (SHPD), or demonstrate to the satisfaction of the DOH that the project, activity, or site covered by the NOI or application has been or is being reviewed by SHPD. If applicable, please submit a copy of the request for review by SHPD or SHPD's determination letter for the project.
4. Any discharges related to project construction or operation activities, with or without a Section 401 WQC or NPDES permit coverage, shall comply with the applicable State Water Quality Standards as specified in HAR, Chapter 11-54.

Hawaii Revised Statutes, Subsection 342D-50(a) requires that "[n]o person, including any public body, shall discharge any water pollutants into state waters, or cause or allow any water pollutant to enter state waters except in compliance with this chapter, rules adopted pursuant to this chapter, or a permit or variance issued by the director."

If you have any questions, please contact Mr. Alec Wong, Supervisor of the Engineering Section, CWB, at (808) 586-4309.

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.

The applicant would need to meet the requirements of our Department of Health Air Pollution Rules, Chapter 60.1, Title 11, State of Hawaii for fugitive dust control. If there is need to discuss these requirements, please contact our Clean Air Branch staff at Ph. 933-0401.

Construction activities must comply with the provisions of Hawaii Administrative Rules, Chapter 11-46, "Community Noise Control."

1. The contractor must obtain a noise permit if the noise levels from the construction activities are expected to exceed the allowable levels of the rules.

2. Construction equipment and on-site vehicles requiring an exhaust of gas or air must be equipped with mufflers.
3. The contractor must comply with the requirements pertaining to construction activities as specified in the rules and the conditions issued with the permit.

Should there be any questions on this matter, please contact the Department of Health at 933-0917.

WORD:FARM COR-11-071415.my