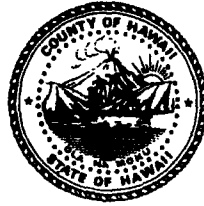


William P. Kenoi
Mayor



BJ Leithead Todd
Director

Margaret K. Masunaga
Deputy Director

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 30, 2011

Mr. Daniel Rodriguez Jr.
Ms. Donelle Wiles-Rodriguez
P.O. Box 243
Papaaloa, HI 96780

Dear Mr. and Ms. Rodriguez:

SUBJECT: Additional Farm Dwelling Agreement (FDA-11-000309)
Applicant: DANIEL RODRIGUEZ JR. and
DONELLE WILES-RODRIGUEZ
Land Owner: DANIEL RODRIGUEZ JR. and
DONELLE WILES-RODRIGUEZ
State Land Use: Agricultural
County Zoning: A-20a (Agricultural, minimum building
site of twenty acres)
Land Area: 15.65 Acres
Tax Map Key: (3) 3-5-001:058

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. Ongoing agricultural activities for the Pahale Farm include the following:

Daniel Rodriguez Jr.
Donelle Wiles-Rodriguez
Page 2 of 6
August 30, 2011

- i. Pahale Farm uses approximately five acres of the total 15.56 acres;
 - ii. Presently income is minimal and is reinvested into the farm;
 - iii. Of the five acres for farming, two acres are for egg production, animal production, fertilizing inputs, pasture maintenance and improvements and animal husbandry (consisting of 16 chickens, 6 sheep and one pig);
 - iv. Of the five acres for farming, one acre is used as for farmers market/CSA garden production with a 20'x36' greenhouse;
 - v. Of the five acres, one acre has the fruit orchard (lemon, lime, spice, mango, orange, avocado, banana, grapefruit, star fruit, lychee, lilikoi, Kukui Nut, Macadamia nut, papaya, pineapple, mountain apple, ulu, Malabar chestnut);
 - vi. Of the five acres, one acre is for coffee trees;
 - vii. Approximately 69 or more hours per week are required for operating the farm.
- b. Proposed agricultural activities include the follows:
- i. Expanding the current farm with more breadfruit, bananas, papaya, lilikoi, pineapple, coffee and other fruit trees;
 - ii. Approximately 70 or more additional 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.

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August 30, 2011

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 August 26, 2011:

“Please be informed that the subject parcel is not within the Department’s existing service limits. The closest point of adequacy is from an existing 8-inch waterline within Hawaii Belt Road approximately 1.2 miles from the subject parcel.

Therefore, the Department has no objections to the proposed application, subject to the applicant understanding and accepting that the Department cannot provide service to the proposed additional farm dwelling. We have no objection to the use of a private rainwater catchment system to serve the proposed additional dwelling.

Should there be any questions, please contact Mr. Finn McCall of our Engineering Division at 961-8070, extension 255.”

- b. Department of Health (DOH) memorandum dated July 20, 2011:

“According to our file, we have a record of only one dwelling and one cesspool (see attached cesspool form). Submit a completed existing cesspool form for the other existing dwelling (see attached form).

On your site plan, indicate which house is existing and which is proposed.

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.

Daniel Rodriguez Jr.
Donelle Wiles-Rodriguez
Page 4 of 6
August 30, 2011

The HEER Office has identified former sugarcane production areas for assessment throughout the state and plans to work with property owners to conduct environment 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 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.”

- c. Department of Health (DOH) memorandum dated August 5, 2011:

“This office received your letter regarding the additional farm dwelling agreement. Based on the information given, Wastewater Branch has no objection to the agreement.”

Decision:

In view of the above, your request to permit two **Additional Farm Dwellings** 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.

Daniel Rodriguez Jr.
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August 30, 2011

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. Your Additional Farm Dwelling Agreement Application is approved for two Additional Farm Dwellings, which will be a total of three dwellings on the subject property (one primary single-family dwelling and two additional farm dwellings).
8. 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.
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 30, 2013 may cause the Director to initiate proceedings to invalidate the AFDA.

Daniel Rodriguez Jr.
Donelle Wiles-Rodriguez
Page 6 of 6
August 30, 2011

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
Mr. Newton Inouye, DOH

AFTER RECORDATION, RETURN BY MAIL TO:

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

TITLE OF DOCUMENT:

ADDITIONAL FARM DWELLING AGREEMENT

PARTIES TO DOCUMENT:

**FIRST PARTY: DANIEL RODRIGUEZ JR. and DONELLE WILES-
RODRIGUEZ**

SECOND PARTY: COUNTY OF HAWAII

PROPERTY DESCRIPTION:

TMK: (3) 3-5-001:058

ADDITIONAL FARM DWELLING AGREEMENT

THIS AGREEMENT made and executed this ___ day of _____, 20 __, by and between **DANIEL RODRIGUEZ JR. and DONELLE WILES-RODRIGUEZ**, herein called the "First Party," whose mailing address is P. O. BOX 243, PAPAALOA, HI 96760, and the **COUNTY OF HAWAII**, herein called the "Second Party."

IT IS HEREBY AGREED that the First Party may construct a second farm dwelling located on the property described by Tax Map Key (3) 3-5-001:058 situated within the State Land Use Agricultural district and zoned Agricultural (A-20a) 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 additional farm dwelling is given subject to the following conditions:

1. The additional 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. 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.
3. This agreement shall include any and all conditions specified in the Additional Farm Dwelling Agreement letter, attached to this document 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 and County laws and rules and regulations change to authorize said farm dwelling, upon request of the First Party, 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 may impose a fine of not more than \$5,000 for violation of Section 205-4.5, Hawaii Revised Statutes. If the violation is not corrected within six months of such citation and the violation continues, a citation for a new and separate violation may be imposed. There shall be a fine of not more than \$5,000 for any additional violation. The Second Party may also impose fines for any violation of Chapter 25, Hawaii County Code, as amended, in accordance with the procedures and fine schedule outlined in Division 3, Article 2, 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.

IN WITNESS WHEREOF, the parties have executed this agreement on the day and year first above written.

FIRST PARTY:

DANIEL RODRIGUEZ JR., Legal Owner

DONELLE WILES-RODRIGUEZ, Legal Owner

SECOND PARTY:

BJ LEITHEAD TODD, Planning Director
County of Hawaii Planning Department

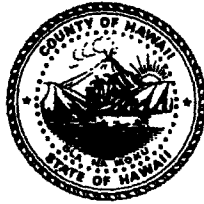
STATE OF HAWAII)
) SS.
COUNTY OF HAWAII)

On this _____ day of _____, 20__ before me personally appeared **DANIEL RODRIGUEZ JR. and DONELLE WILES-RODRIGUEZ** to me known to be the persons described in and who executed the foregoing instrument, and acknowledged that they executed the same as their free act and deed.

Notary Public, State of _____

My commission expires: _____

William P. Kenoi
Mayor



BJ Leithead Todd
Director

Margaret K. Masunaga
Deputy Director

County of Hawai'i

PLANNING DEPARTMENT

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Phone (808) 961-8288 • Fax (808) 961-8742

August 30, 2011

Mr. Daniel Rodriguez Jr.
Ms. Donelle Wiles-Rodriguez
P.O. Box 243
Papaaloa, HI 96780

Dear Mr. and Ms. Rodriguez:

SUBJECT: Additional Farm Dwelling Agreement (FDA-11-000309)
Applicant: DANIEL RODRIGUEZ JR. and
DONELLE WILES-RODRIGUEZ
Land Owner: DANIEL RODRIGUEZ JR. and
DONELLE WILES-RODRIGUEZ
State Land Use: Agricultural
County Zoning: A-20a (Agricultural, minimum building
site of twenty acres)
Land Area: 15.65 Acres
Tax Map Key: (3) 3-5-001:058

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. Ongoing agricultural activities for the Pahale Farm include the following:

Daniel Rodriguez Jr.
Donelle Wiles-Rodriguez
Page 2 of 6
August 30, 2011

- i. Pahale Farm uses approximately five acres of the total 15.56 acres;
 - ii. Presently income is minimal and is reinvested into the farm;
 - iii. Of the five acres for farming, two acres are for egg production, animal production, fertilizing inputs, pasture maintenance and improvements and animal husbandry (consisting of 16 chickens, 6 sheep and one pig);
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- b. Proposed agricultural activities include the follows:
- i. Expanding the current farm with more breadfruit, bananas, papaya, lilikoi, pineapple, coffee and other fruit trees;
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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.

Daniel Rodriguez Jr.
Donelle Wiles-Rodriguez
Page 3 of 6
August 30, 2011

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 August 26, 2011:

“Please be informed that the subject parcel is not within the Department’s existing service limits. The closest point of adequacy is from an existing 8-inch waterline within Hawaii Belt Road approximately 1.2 miles from the subject parcel.

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Should there be any questions, please contact Mr. Finn McCall of our Engineering Division at 961-8070, extension 255.”

- b. Department of Health (DOH) memorandum dated July 20, 2011:

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Daniel Rodriguez Jr.
Donelle Wiles-Rodriguez
Page 4 of 6
August 30, 2011

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- c. Department of Health (DOH) memorandum dated August 5, 2011:

“This office received your letter regarding the additional farm dwelling agreement. Based on the information given, Wastewater Branch has no objection to the agreement.”

Decision:

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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.


Daniel Rodriguez Jr.
Donelle Wiles-Rodriguez
Page 5 of 6
August 30, 2011

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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.
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Daniel Rodriguez Jr.
Donelle Wiles-Rodriguez
Page 6 of 6
August 30, 2011

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
o:\afda\afdajrh\apvl\rodriguez35001058aprvi.doc

Enclosures: AFDA document
AFDA document instruction sheet

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