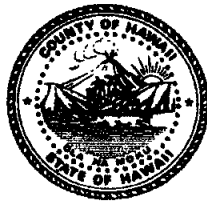


William P. Kenoi
Mayor



Duane Kanuha
Director

Bobby Command
Deputy Director

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County of Hawai'i
PLANNING DEPARTMENT

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April 21, 2014

Judith Marie Migliori
Ivy Angelina Grace
75-450 Nani Kailua Drive
Kailua-Kona, HI 96740

Dear Ms. Migliori and Ms. Grace:

Additional Farm Dwelling Agreement Application (FDA-14-000350)

Applicants:	Judith Marie Migliori Ivy Angelina Grace
Owner(s):	Thomas Michael Migliori Judith Marie Migliori Ivy Angelina Grace
State Land Use:	Agricultural
County Zoning:	Agricultural (1-a)
Land Area:	1.000 acres
TMK:	<u>(3) 7-5-012:097 (COR-14-089763)</u>

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. 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 additional farm dwelling is needed in connection with the agricultural productivity or farming operation. Your farm plan included the following proposed income producing agricultural activities:
 - a. Proposed agricultural activities include the following:
 - i. Maintain, harvest and distribute ornamental flowers, foliage, flowering shrubs and trees over a planting area of approximately 15,154 square feet (0.35 acres) containing:

- a) Planting Area no. 1: (4,900 square feet): Bird of Paradise, Beehive Ginger, Psitticorum Heliconia, Red Ginger, Heliconia, Puakinikini, Lantern Ilima, Protea, and Plumeria trees (or same square foot area of alternate ornamental flowering flowers, foliage and trees);
 - b) Planting Area no. 2a (1,575 square feet): raised beds containing a mixture of organic vegetables and gerbera daisies;
 - c) Planting Area no. 2b (675 square feet) a 45 foot by 15 foot shade house north of proposed second farm dwelling for growing starts and dendrobium orchids).
 - d) Planting Area no. 3 (990 square feet): Cordyline, a variety of colored and green ti plants and Monstera (mini-cultivar);
 - e) Planting Area no. 4 (492 square feet): Stephanotis, a vining plant to be planted atop a 123 foot long chain link fence installed on top of a retaining wall;
 - f) Planting Area no. 5 (452 square feet): Blue Jade vine to be planted atop a 113 foot long chain link fence installed on top of a retaining wall;
 - g) Planting Area no. 6 (1,800 square feet) flowering trees and shrubs including Puakinikini, Lantern Ilima, Protea, and Plumeria trees; and
 - h) Planting Area no. 7 (4,270 square feet): flowering trees and shrubs including Puakinikini, Lantern Ilima, Protea, and Plumeria trees.
- ii. The proposed labor man-hours are approximately 36 hours per week to maintain, harvest and distribute.
- 4. In additional support, a State of Hawaii Department of Taxation's General Excise (GE) Tax License has also been presented.
 - 5. 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, 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.** (emphasis added)
- 2. The subject lot was created by subdivision (SUB 98-000056) approved on August 20, 2008. The subject lot was created after June 4, 1976, which, pursuant to HRS §205-4.5(b), requires the first dwelling on the lot to be a farm dwelling.

3. The Farm Plan, GE Tax License (W01673526-02), and the agreement to use the dwelling for agricultural or farm-related activity on the building site demonstrate that there will be income producing agricultural activity and the income will be taxed.

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

- a. Department of Water Supply (DWS) (Letter dated March 18, 2014):

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

Please be informed that an existing 5/8"-meter serves the first farm dwelling and is adequate for one dwelling unit at an average of 400 gallons per day. Inasmuch as this application is proposing an additional dwelling, the installation of a separate 5/8-inch meter would normally be required in accordance with the Department's Rules and Regulations. However, the Department cannot provide an additional meter for the proposed additional farm dwelling as the previous subdivision (SUB 98-000056) that created the subject parcel used the remaining equivalent units of water that were available at that time.

The Department has no objection to the proposed application, subject to the applicant understanding and accepting that the Department cannot provide service to the proposed additional farm dwelling. Should the application be approved, both dwellings shall not share the existing meter, and the water system plumbing between the two dwellings shall not be interconnected in any way.

Further, as the applicant indicates that there is existing agricultural activity within the subject parcel, a reduced pressure type backflow assembly must be installed within five (5) feet of the existing meter on private property. The installation of the backflow prevention assembly must be inspected and approved by the Department. A copy of the Department's backflow prevention handout will be sent to the applicant to help them understand this requirement.

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

- b. Real Property Tax Office (RPT):

No comments were received.

- c. Department of Health (DOH)) (Memorandum dated April 8, 2014):

"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 applicant would need to meet the requirements of our Department of Health Air Pollution Rules, Chapter 60.1, Title 11, State of Hawai'i 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 Hawai'i 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.

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 Hawai'i 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 health community design."

Decision:

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

1. The additional 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 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 Additional Farm Dwelling 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 \$31.00 in accordance with the enclosed Additional Farm Dwelling Agreement 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. The First Party shall adhere to 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.

4. Your Additional Farm Dwelling Agreement has been approved based primarily on proposed agricultural activity as summarized previously in this letter. It is recognized that the First Party (owners and lessees) to the Agreement shall have implemented at least 75% of the proposed farm plan within three (3) year of approval of the building permit for the additional farm dwelling. The Second Party (County of Hawaii Planning Department) of the Agreement may allow time extensions and modifications for good cause shown by the First Party.
5. The First Party shall allow the Second Party or its representative to inspect the farm upon reasonable prior notice.
6. This Additional Farm Dwelling Agreement 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 building permit for this additional farm dwelling on or before April 21, 2016 may cause the Director to initiate proceedings to invalidate the AFDA.
7. An initial extension of time for the performance of conditions within the permit may be granted by the Planning Director upon the following circumstances:
 - A. Non-performance is the result of conditions that could not have been foreseen or are beyond the control of the applicants, successors, or assigns and that are not the result of their fault or negligence.
 - B. Granting of the time extension would not be contrary to the General Plan or Zoning Code.
 - C. Granting of the time extension would not be contrary to the original reasons for the granting of the permit.
 - D. The time extension granted shall be for a period not to exceed the period originally granted for performance (i.e., a condition to be performed within one year may be extended for up to one additional year).

Should any of these conditions not be met or substantially complied with in a timely fashion, the Planning Director may initiate procedures to revoke this permit.

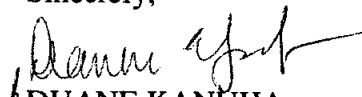
In reference to the Department of Water Supply's comment, we suggest the following:

1. Any dwelling not serviced by a County water system should be provided with and maintain a private potable rain-water catchment system with a minimum capacity of 6,000 gallons for domestic consumption or potable uses. This catchment system should adhere to the Department of Public Works, Building Division's "Guidelines for Owners of Rain Catchment Water Systems" as well as the State Department of Health requirements related to water testing and water purifying devices.
2. Any farm dwelling should be provided with and maintain a private water supply system with an additional minimum storage capacity of 3,000 gallons for fire fighting and other emergency purposes. The emergency water supply system, including the necessary compatible connection devices and the location of the water storage unit on the property, should meet with the approval of the Hawaii County Fire Department.

Judith Marie Migliori
Ivy Angelina Grace
April 21, 2014
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If you have any questions please call Rosalind Newlon of our West Hawaii Office at 323-4770.

Sincerely,


DUANE KANUHA
Planning Director

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xc: Chief Sanitarian, DOH
Manager, DWS
Administrator, RPT
Planning Department – Kona