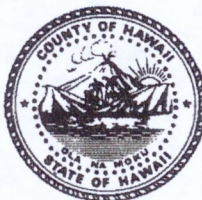


William P. Kenoi
Mayor



Duane Kanuha
Director

Bobby Command
Deputy

West Hawai'i Office
74-5044 Ane Keohokalole Hwy
Kailua-Kona, Hawai'i 96740
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County of Hawai'i

PLANNING DEPARTMENT

East Hawai'i Office
101 Pauahi Street, Suite 3
Hilo, Hawai'i 96720
Phone (808) 961-8288
Fax (808) 961-8742

February 9, 2016

Joyce J. Macdonald
83-5364 Middle Keel Road
Captain Cook, HI 96704

Dear Ms. Macdonald:

Additional Farm Dwelling Agreement (FDA-15-000393)

Applicant(s): Joyce J. Macdonald
Owner(s): Joyce Macdonald Trust
State Land Use: Agricultural
County Zoning: Agricultural (A-1a)
Land Area: 1.406 acres
TMK: (3) 8-3-010:041 (COR-16-102992)

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 ongoing and proposed income producing agricultural activities:
 - a. Ongoing agricultural activities include: maintain and harvest 290 coffee trees over 0.25 acres and 0.75 acres of macadamia nut trees.
 - b. Proposed agricultural activities include the following: maintain and harvest a total of 0.5 acres of coffee trees and a total of 0.75 acres of macadamia nut trees.
 - c. The ongoing labor man-hours are approximately 20 hours per week to maintain, harvest and distribute. The additional labor man-hours would be 20 hours per week for a total of 40 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 4307) approved on May 16, 1979. 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 (W30263112-01), 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 identified below:
 - a. Department of Water Supply (DWS) has provided comments. (See attached copy of DWS memo dated January 21, 2016).
 - b. Real Property Tax Office (RPT):
No comments were received.
 - b. Department of Health (DOH):
No comments were received.

Decision:

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

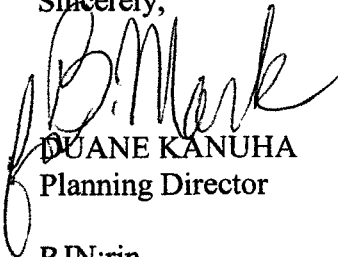
1. The additional farm dwelling shall only be used to provide shelter for persons involved in the agricultural or farm-related activity on the building site. Family members who are not engaged in agricultural or farm-related activities are allowed to reside in the farm dwelling.
2. The agreement shall 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 February 9, 2018 may cause the Director to initiate proceedings to invalidate the AFDA.
7. The First Party or current owner/lessee shall submit proof of remittance of the Department of Water Supply Service Lateral Installation Charge with the submittal of a building permit application.
8. 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.

If you have any questions please call Rosalind Newlon of our West Hawaii Office at 323-4770.

Sincerely,



DUANE KANUHA
Planning Director

RJN:rjn

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