

Harry Kim
Mayor



Michael Yee
Director

Daryn Arai
Deputy Director

West Hawai'i Office
74-5044 Ane Keohokalole Hwy
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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

December 14, 2016

Ms. Kirsten Anne Potter
73-4404 Paiaha Street
Kailua-Kona, HI 96740

Dear Ms. Potter:

SUBJECT: Application:	ADDITIONAL FARM DWELLING AGREEMENT (FDA-16-000408)
Applicant:	KIRSTEN ANNE POTTER
Land Owners:	KIRSTEN ANNE POTTER & DAVID LEE POTTER
State Land Use:	Agricultural
County Zoning:	Agricultural (A-1a)
Land Area:	43,562 square feet
Location:	73-4404 Paiaha Street, Kailua-Kona, North Kona
Tax Map Key:	(3) 7-3-046:135

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. Current agricultural activities include the following:
 - i. Maintain and restore productivity, and harvest 35 producing macadamia nut trees.

- b. Proposed agricultural activities include the following:
 - i. Plant, establish, maintain and harvest 15 additional macadamia nut trees for a total of 50 trees existing and proposed.
 - ii. Plant, establish, maintain and harvest 500 romaine lettuce plants, replanted four times a year for four harvest cycles per year, in a 200 square foot raised planting bed.
 - iii. All cultivation and processing is to meet organic certification standards.
 - iv. The proposed labor man-hours exceed 16 hours per week to maintain, harvest, pack and distribute according to organic farming certification standards.
- 4. In additional support, a State of Hawaii Department of Taxation's General Excise (GE) Tax License for Kirsten Potter has also been presented (License No. GE-023-502-6432-01).
- 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 no. 4040 approved on January 10, 1978. The subject lot was created after June 4, 1976, which, pursuant to HRS §205-4.5(b), requires the first dwelling on the lot, as well as the second dwelling thereon, to be a farm dwelling.
- 3. The Farm Plan 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 that the income will be taxed.
- 4. In addition, the following agencies have submitted their comments as identified below:
 - a. Department of Water Supply (DWS) memo dated November 1, 2016 (Exhibit "1" attached); and
 - b. Department of Health (DOH) memo dated October 28, 2016 (Exhibit "2" attached)

Decision:

In view of the above, your request to construct a **second farm dwelling** is approved 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.
3. 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.
4. The property owner 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.
5. Your Additional Farm Dwelling Agreement has been approved based primarily on existing and proposed agricultural activity as summarized previously in this letter. It is recognized that the First Party (property 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, in its sole discretion, allow time extensions and modifications for good cause shown by the First Party.
6. The property owner shall allow agency representatives of the County of Hawaii Planning Department to inspect the farm from time to time upon reasonable prior notice.
7. 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 December 13, 2018 may cause the Director to initiate proceedings to invalidate the AFDA.

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.

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. A County of Hawaii fire hydrant within serviceable range of the additional farm dwelling may fulfill this requirement in lieu of providing additional on-site storage capacity.

Ms. Kirsten Potter
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If you have any questions regarding this conditional approval and the procedures stated herein, please call Keola Childs, Planner, of our West Hawaii Office at 323-4770.

Sincerely,



MICHAEL YEE
Planning Director

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xc: Chief Sanitarian, DOH
Manager, DWS
Administrator, RPT



DEPARTMENT OF WATER SUPPLY • COUNTY OF HAWAII

345 KEKĀNĀO'A STREET, SUITE 20 • HILO, HAWAII 96720
TELEPHONE (808) 961-8050 • FAX (808) 961-8657

November 1, 2016

TO: Mr. Duane Kanuha, Director
Planning Department

FROM: Keith K. Okamoto, Manager-Chief Engineer

SUBJECT: Additional Farm Dwelling Agreement Application
(FDA-16-000408)
Applicant – Kirsten Anne Potter
Tax Map Key (3) 7-3-046:135

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PLANNING DEPARTMENT
COUNTY OF HAWAII

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

An existing 5/8-inch meter services this property and is adequate for only one (1) 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 regulations. However, the Department's existing water system facilities cannot support an additional water meter at this time. Extensive improvements and additions, which may include, but not be limited to, source, storage, booster pumps, transmission, and distribution facilities, would be required. Currently, sufficient funding is not available from the Department for such improvements and no time schedule is set.

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. Should the application be approved, all dwellings shall not share the existing meter, and the water system plumbing between any dwellings shall not be interconnected in any way.

Please be informed that a reduced pressure type backflow prevention assembly was previously installed and approved by the Department.

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

Sincerely yours,

Keith K. Okamoto, P.E.
Manager-Chief Engineer

TS:dfg

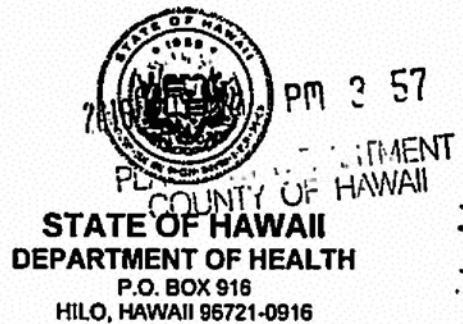
EXHIBIT 1

copy – Ms. Kirsten Anne Potter
DWS Customer Service Sections (Hilo and Kona)

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... Water, Our Most Precious Resource ... Ka Wai A Kāne ...

The Department of Water Supply is an Equal Opportunity provider and employer.



MEMORANDUM

DATE: October 28, 2016

TO: Mr. Duane Kanuha
Planning Director, County of Hawaii

FROM: Eric Honda *EH*
District Environmental Health Program Chief

SUBJECT: Application: ADDITIONAL FARM DWELLING AGREEMENT
(FDA-16-000408)
Applicant: KIRSTEN ANNE POTTER
Land Owner: KIRSTEN ANNE POTTER
SLU: Agricultural
CZ: Agricultural (A-1a)
Land Area: 43,562 square feet
Location: 73-4404 Paiaha Street, Kailua-Kona
TMK: 7-3-046:135

As a demolition and renovation activity, the Federal Register, 40 CFR Part 61, National Emission Standard for Hazardous Air Pollutants, Asbestos NESHAP Revision; Final Rule, November 20, 1990, requires the owner/operator to inspect the affected areas to determine whether asbestos is present.

Under the Asbestos School Hazard Abatement Response Act (ASHARA), all persons who conduct inspections (i.e. perform sampling and assessment of suspected asbestos-containing material) in schools or public and commercial buildings must have an active Asbestos Hazard Emergency Response (AHERA) certificate-of-training from an accredited training provider.

Under NESHAP's regulation, the owner/operator would be required to file with the Department of Health, Noise, Radiation and Indoor Air Quality Branch, an Asbestos Demolition/Renovation notification 10 working days prior to demolition of each building or the disturbance of regulated asbestos-containing material. All regulated quantities and types of asbestos-containing materials would be subject to emission controls, proper collection, containerizing, and disposal at a permitted landfill.

Under a renovation project, if the amount of friable or non-friable material rendered friable is

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DEFUT: PVT. SEC.
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less than 160 square feet, the project would not be subject to the NESHAP requirements. However, the persons who conduct activities related to abatement and/or disturbances to friable material greater than three square feet or three linear feet, must have an active AHERA certificate of training from an accredited provider for that specific discipline (i.e., project designer, abatement supervisor and worker).

If you have any further questions, please feel free to contact the Indoor Air & Radiological Health Branch at (808) 586-5800.

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.