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County of Hawai'i
PLANNING DEPARTMENT

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November 21, 2017

Mitchell Marks
265 Roosevelt Way
San Francisco, CA 94114

Dear Mr. Marks:

Additional Farm Dwelling Agreement Application (FDA-17-000438)
Applicant: Mitchell Marks & Jason Akaka
Owner: Mitchell Marks
State Land Use: Agriculture
County Zoning: Agricultural (A-5a)
Land Area: 6.3155 acres
TMK: (3) 8-2-003:009

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 existing income-producing agricultural activities on the subject property:
 - (a) Existing agricultural activities:
 1. Plant, maintain, and harvest a variety of Fruit trees (such as Avocado, Mango and Lilikoi) and plants, with the primary crop being the cacao plant.
 - (b) The labor man-hours for the above existing activities are 30 hours per week with the additional dwelling the labor man-hours will expand to 130 hours per week.
4. Evidence of engagement in agricultural productivity in the form of a List of Expenses made towards the farm operation and the 2017 tax assessment which shows the dedicated land used for agriculture.
5. The 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.** (emphases added)
2. The subject lot was created in 1944, which is prior to June 4, 1976, therefore pursuant to HRS §205-4.5(b), allows the first dwelling on the lot to be a single-family dwelling.
3. The Farm Plan, agricultural dedication, 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(Memorandum dated October 25, 2017):

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

Please be informed that an existing 5/8-inch meter is assigned to the subject parcel, which 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, a portion of the subject parcel is not within the Department's existing pressure zone and an Elevation Agreement has been previously approved for the subject parcel. Parcels that are not within the Department's pressure zone are limited to one (I) unit of water, served through a 5/8-inch meter. One (I) unit of water allows for an average daily usage of 400 gallons served through a 5/8-inch meter and is suitable for one (1) single-family dwelling.

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.”

(b) Real Property Tax Office (Memorandum dated October 19, 2017):

“Comments from the Appraisal Section – Property is receiving agricultural use value. – Non dedicated ag use (3 acres) – Appraiser to Contact: Jennifer Long

Comments from the collection section – Status of real property taxes: Real property taxes on the parcel referenced above are paid up to and including December 31, 2017 – Collection personnel to contact: Toni Ann Quitoriano, Tax Clerk”

(c) Department of Health (Memorandum dated November 03, 2017):

“The Health Department found no environmental health concerns with regulatory implications in the submittals.”

Decision:

In view of the above, your request to construct an additional dwelling as a 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 (“AFDA”) 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 \$41.00 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 with all required attachments has been recorded at the Bureau of Conveyances.**
4. The First Party (owners and their lessees and their successors in interest) 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.
5. Your Additional Farm Dwelling Agreement has been approved based on your existing and proposed 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 additional farm dwelling. 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. "Implementing" includes the planting and ground-rooted establishment of the proposed trees in a healthy, growing state. The Second Party (County of Hawai'i Planning Department) to the Agreement may, in its sole discretion, allow time extensions and modifications for good cause shown by the First Party.

6. The First Party (owners and their lessees and their successors in interest) shall allow the Second Party or its representative to inspect the farm from time to time upon reasonable prior notice.
7. **The First Party is required to secure a building permit from the Department of Public Works, Building Division, for the construction of the additional farm dwelling on or before November 22, 2019.** Failure to secure a building permit for this additional farm dwelling on or before November 22, 2019 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

Mitchell Marks

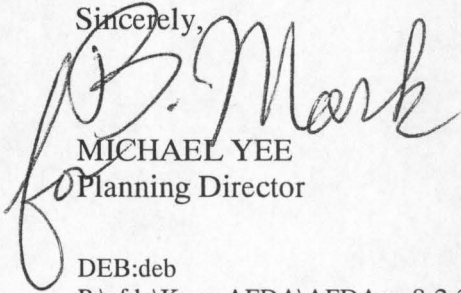
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compatible connection devices and the location of the water storage unit on the property, should meet with the approval of the Hawai'i County Fire Department.

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

Sincerely,

A handwritten signature in black ink that reads "M. Yee". The signature is written in a cursive style with a large, looping initial "M".

MICHAEL YEE
Planning Director

DEB:deb

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