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PLANNING DEPARTMENT

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July 16, 2018

Christopher & Karis Lieto
75-5660 Kopiko St Ste C7 PMB 340
Kailua-Kona, HI 96740-3122

Dear Mr. & Mrs Lieto:

Additional Farm Dwelling Agreement Application (FDA-18-000445)
Applicant: Christopher & Karis Lieto
Owner: Christopher J. Lieto & Karis J. Lieto
State Land Use: Agriculture
County Zoning: Agricultural (A-5a)
Land Area: 5.001 acres
TMK: (3) 7-5-010:066

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. Care and maintain cows, sheep, goats and chicken
 - (b) Proposed agricultural activities:
 1. Care maintain and train horses
 2. Nurse, plant and sell aquaponics produce.
 - (c) The labor man-hours for the above existing activities are 4-5 hours per week with the additional dwelling the labor man-hours will expand to 53-72 hours per week.
4. Evidence of engagement in agricultural productivity in the form of a State of Hawaii Department of Taxation's General Excise (GE) Tax License has been presented.

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 by subdivision (SUB-15-001458) approved on December 15, 2015, which, pursuant to HRS §205-4.5(b), requires the first dwelling on the lot to be a farm 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 June 18, 2018):

"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, the parcel does not front upon a Department of Water Supply waterline and is, therefore, considered to be out of bounds. Parcels that are out of bounds are limited to just one unit of water. One unit of water allows for an average daily usage of 400 gallons served through a 5/8-inch meter and is suitable for one 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.

Further, as the applicant indicates that there is an existing and proposed agricultural activity within the subject parcel, a reduced pressure type backflow prevention

assembly must be installed within five (5) feet of the existing (if one does not already exist) meter on private property. The installation of the backflow prevention assembly must be inspected and approved by the Department before commencement of water service. 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. Troy Samura of our Water Resources and Planning Branch at 961- 8070, extension 255."

(b) Real Property Tax Office:

No Comments were received.

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

"The Department of Health (DOH), Clean Water Branch (CWB), acknowledges receipt of the subject document on 29, 2018. The CWB has reviewed the limited information contained in the subject document and offers the following comments:

Permit Issuance

- * Any project and its potential impacts to State waters must meet the State's:
 - 1) Antidegradation policy, which requires that the existing uses and the level of water quality necessary to protect the existing uses of the receiving State water be maintained and protected;
 - 2) Designated uses, as determined by the classification of the receiving State waters; and
 - 3) Water quality criteria [Hawai'i Administrative Rules (HAR), Chapter 11-54],
- * A Section 401 Water quality Certification (WQC) is required if your project/activity:
 - Requires a federal permit, license, certificate, approval, registration, or Statutory exemption; and
 - May result in a discharge into State waters. The term "discharge" is defined in Clean Water Act, Subsections 502 (16), 502 (12), and 502 (6). Examples of "discharge" include, but are not limited to allowing the following pollutants to enter State waters from the surface or in-water: solid waste, rock/sand/dirt, heat, sewage, construction debris, any underwater work, chemicals, fugitive dust/spray/paint, agricultural wastes, biological materials, industrial wastes, concrete/sealant/epoxy, and washing/cleaning effluent.

Determine if your project/activity requires a federal permit, license, certificate, approval, registration, or statutory exemption by contacting the appropriate federal agencies (e.g. Department of the Army (DA), U.S. Army Corps of Engineers (COE), Pacific Ocean Division Honolulu District Office (POH) [Tel:808-835-4303](tel:808-835-4303); U.S. Environmental

Protection Agency [Tel:415-947-8021](tel:415-947-8021); Federal Energy Regulatory Commission Tel: 866-208-3372; U.S. Coast Guard Office of Bridge Programs [Tel:202-372-1511](tel:202-372-1511)).

To request a Section 401 WQC, you must complete and submit the Section 401 WQC application. This application is available on the e-Permitting Portal website locate at: <https://eha-cloud.doh.hawaii.gov/epermit/>.

Please see HAR, chapter 11-54 for the State' Water Quality Standards and for more information on the Section 401 WQC. HAR, Chapter 11-54 is available on the CWB website at: <http://health.hawaii.gov/cwb/>.

- National Pollutant Discharge Elimination System (NPDES) permit coverage is required for:
 - Storm water associated with construction activities for land disturbances of one (1) acre or more. Land disturbance includes, but is not limited to, clearing, grading, grubbing, excavation, demolition, uprooting of vegetation, equipment staging, and storage areas.
 - Storm water associated with industrial activities for facilities with Standard Industrial Classification Codes regulated in 40 CFR 122.26(b)(14)(i) through (ix) and (xi).
 - Storm water and certain non-storm water from a small Municipal Separate Storm Sewer System.
 - Discharges of water pollutants into State surface waters, Examples of these discharges include, but are not limited to, cooling water, hydrotesting waters, dewatering effluent, and process wastewater.
 - Discharges from the application of pesticides (including pesticides, herbicides, fungicides, rodenticides, and various other substances to control pest) to State waters.

An application for an NPDES individual permit must be submitted at least 180 calendar days before the commencement of the discharge or start of construction activities. To request and NPDES individual permit, you must complete and submit the NPDES individual permit application. This application is available on the e-Permitting Portal website located at: <https://eha-cloud.doh.hawaii.gov/epermit/>.

A Notice of Intent (NOI) for coverage under a specific NPDES general permit must be submitted at least 30 calendar days before the commencement of the discharge or start of construction activities. To request NPDES general permit coverall, you must complete and submit the NOI. The NOI is available on the e-Permitting Portal website located at: <https://eha-cloud.doh.hawaii.gov/epermit/>.

Please see HAR, Chapter 11-55 for more information on the NPDES individual permit and NPDES general permits. The specific NPDES general permits located in

HAR, Chapter 11-55, Appendices B through M. HAR, Chapter 11-55 and HAR, Chapter 11-55, Appendices B through M are available on the CWB website at <http://health.hawaii.gov/cwb/>.

- According to State law, all discharges related to the project construction or operation activities, whether or not NPDES permit coverage and/or Section 401 WQC are required, must comply with the State's Water Quality Standards

Monitoring

- Effluent discharge and/or receiving water monitoring may be required as conditions of Section 401 Water Quality Certifications and NPDES General and Individual permits.

Enforcement

- Noncompliance with water quality requirements contained in HAR, Chapter 11-54 and/or permitting requirements specified in HAR, Chapter 11-55 may be subject to penalties of \$25,000 per day per violation.
- Violations of Hawai'i Revised Statutes 342D and 342E may elicit administrative, civil and criminal penalties for such violations.

Polluted Runoff Control

- Manage projects identified in watershed-based plans that reduce polluted runoff and educate the public about nonpoint source pollution. Projects are selected through an annual request for proposals. Funding is provided by the EPA through the Clean Water Act. For more information on projects and funding opportunities, please visit: www.hawaii.gov/doh/pollutendrunoffcontrol.

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 Environmental 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 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 July 16, 2020.** Failure to secure a building permit for this additional farm dwelling on or before July 16, 2020 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).

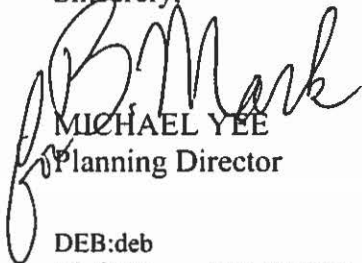
Should any of these conditions not be met or substantially complied with in a timely fashion, the Planning Director may initiate procedures to revoke this permit.

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 Hawai'i County Fire Department.

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

Sincerely,



MICHAEL YEE
Planning Director

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