

Mr. Xiangdong Guo

April 11, 2022

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FINDINGS

1. **Building Permits:** Real Property Tax records and the information submitted with the applicant's Farm Site Plan confirms one farm dwelling exists on the subject parcel. Building Division records indicate that this "First Farm Dwelling" was constructed by permit in (March 18, 2004), building permit No. B2004-0528H.
2. **Proposed Request: Additional Farm Dwelling (Second Farm Dwelling).** Agricultural State Land Use and County Zoning allows the landowner to apply for an Additional Farm Dwelling (AFD) on this property, pursuant to HRS sec. 205-4.5 (a)(4) or (b) and Hawai'i County Zoning Code sec. 25-5-77 (b) or (c), and Hawai'i County Planning Department Rule 13-4 (c).
3. **Proposed Agricultural Activity:** There is evidence of existing agricultural activity on the subject parcel TMK: (3) 2-7-010:006, and the applicant plans to continually produce and process products from their agricultural farm operations. There are 8 goats, 12 free-range ducks, 14 free-range chickens, 10 heads of cattle, banana, mango, 100 king palms, 1,000 white money trees, 1,000 red mini tea leaf plants, 20 lauhala, and 500 tropical cordyline plants. Applicant-owner also leases 70 acres on parcel TMK: (3) 3-4-002:004, for rotating crops of purple sweet potatoes.
4. **Evidence of Agricultural Activity**
 - a) Real Property Tax Division: According to Real Property Tax records, the property is currently (2022) assessed for 1 acre of confined animals, 1 acre of orchards and 7 acres of pastoral agricultural use. The property class is agricultural.
 - b) Income Tax Records: Evidence of a general excise tax license and filing was submitted, including a copy of a 2021 GE Annual Tax Return Form.
5. **Satisfaction of Statutory Standards:** To substantiate the development of commercial agriculture on the subject parcel, the landowner-applicants have submitted documentation to satisfy the statutory standards of the two state laws germane to evaluating this application:
 - a) HRS, Section 204-4.5 (a)(4) for a 'farm dwelling,' states, in part, "... *a single-family dwelling located on and used in connection with a farm, ... , or where agricultural activity provides income to the family occupying the [farm] dwelling, ...*" [emphasis added]; and
 - b) HRS, Section 165-2 defines "farming operation" to mean "... *a commercial agricultural ... [or whatever type of agriculture is undertaken] facility or pursuit conducted, in whole or in part, ...*" [emphasis added].
6. **Rationale for Establishing AFD:** The County of Hawai'i Code requires that the applicant submit evidence of the applicant's "continual agricultural activity" on farm plan.

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H.C.C. § 25-5-77(c)(2) It strongly suggests that the applicant should have some present agricultural activity in order to qualify for a second farm dwelling. The applicant has provided the necessary documents to prove there is existing and continual agricultural activity on parcels TMK: (3) 2-7-010:006 and TMK: (3) 3-4-002:004. There is approximately (1) acre of confined animals, (1) acre of orchards, and (7) acres of pasture on parcel TMK: (3) 2-7-010:006. The man-hours required to maintain the 15-acre farm is (8) eight hours per day work, with (2) full-time workers, assigned to clean, feed livestock, farm maintenance and repairs. Additionally, Mr. Xiandong Guo leases 70 acres of land on TMK: (3) 3-4-002:004, for planting rotating crops of purple sweet potatoes and harvests up to 60,000 pounds a week. He employs (7) seven full-time workers and three part-time workers. The proposed additional farm dwelling (workers quarters) is intended to house full-time employees.

AGENCY COMMENTS

1. **Real Property Tax (RPT):** No comments received.
2. **Department of Water Supply (DWS):** DWS comment letter dated 3/17/2022. (attached)

The subject parcel does not have an existing water service with the Department, as the parcel is not within the service limits of the Department's existing water system. 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.

3. **State of Hawai'i Department of Health (DOH):** comment letter dated 3/24/2022. (attached)

DECISION AND CONDITIONS

In view of the above, your request to construct one (1) Additional Farm Dwelling on the property is approved subject to the following conditions:

1. Your AFDA has been approved based on existing and expanded agricultural activity as summarized in this letter.
2. The AFD shall be used for farm-related purposes and 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 additional farm dwelling.
3. An Additional Farm Dwelling Agreement affidavit shall be notarized and submitted to the Planning Department for recordation with the Bureau of Conveyances, State of Hawai'i which states that the additional dwelling shall be used for farm related purposes.

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4. The farming enterprise shall be commercial in nature and up to seventy-five-percent (75%) of your proposed farm plan shall be implemented within three (3) years from the AFDA approval date. The Planning Department shall be allowed to inspect the farm upon reasonable prior notice.
5. 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 AFD Agreement must be returned to the Planning Department with the appropriate notarized signature(s) along with a check made out to the Bureau of Conveyances in the amount of \$41.00 in accordance with the enclosed AFDA 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 sent for recordation by the Planning Department.

6. The applicant is responsible for any State and Federal tax consequences due to the income produced from the farm activity.
7. The First Party (as identified in the Additional Farm Dwelling Agreement) shall allow the Second Party or its representatives to inspect the farm upon reasonable prior notice.
8. DWS has noted that the subject parcel does not have a County approved water service at present, and an additional water service is not available for the additional dwelling.
9. This AFD shall be valid for a period of two (2) years from the date of this approval letter to secure a Building Permit (BP) for the AFD. Failure to secure a BP for this AFD on or before **May 11, 2024**, may cause the Director to initiate proceedings to invalidate the AFD.
10. 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.)

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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.

Please feel free to contact Terri L. Napeahi of this office at (808) 961-8288, ext. 8160 or email terri.napeahi@hawaiicounty.gov, should you have any questions and/or concerns.

Sincerely,

DocuSigned by:

71C04DC68548430...

ZENDO KERN
Planning Director

TLN:cn

\\coh01\planning\public\Admin Permits Division\AFDA\2021\AFD-21-000495 Guo\FDA-21-000495 Approval Letter Guo.doc

Enclosures: DOH Comment letter dated March 24, 2022
DWS Comment letter dated April 1, 2022
AFDA document
AFDA document instruction sheet

cc w/Encl: Chief Sanitarian, DOH
Manager-Chief Engineer, DWS

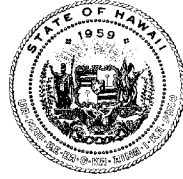
cc w/Encl: GIS Section (letter w/enclosures)
Lisa Miura, Administrator, Real Property Tax Office (letter only)

Mori, Ashley

From: Honda, Eric T. <Eric.Honda@doh.hawaii.gov>
Sent: Thursday, March 24, 2022 9:47 AM
To: Planning Internet Mail
Subject: FDA-21-000495
Attachments: FDA-21-000495 TMK2-7-010--006.doc

Eric Honda
District Environmental Health Program Chief
Hawaii District Health Office
(808) 933-0917
Eric.honda@doh.hawaii.gov

DAVID Y. IGE
GOVERNOR OF HAWAII



ELIZABETH A. CHAR, M.D.
DIRECTOR OF HEALTH

STATE OF HAWAII
DEPARTMENT OF HEALTH
P.O. BOX 916
HILO, HAWAII 96721-0916

MEMORANDUM

DATE: March 24, 2022

TO: Mr. Zendo Kern
Planning Director, County of Hawaii

FROM: Eric Honda
District Environmental Health Program Chief

SUBJECT: Application: Additional Farm Dwelling Agreement (FDA-21-000495)
Applicant: Xiangdong Guo
Owner: Xiangdong Guo
Request: One Additional Farm Dwelling Unit
TMK: 2-7-010:006

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.

Public Water Systems: The Department of Health's Safe Drinking Water Branch authority on drinking water quality is based on the definition of a "public water system." Federal and state regulations define a public water system as a system that serves 25 or more individuals at least 60 days per year or has at least 15 service connections. All public water system owners and operators are required to comply with Hawaii Administrative Rules, Chapter 11-20 (HAR 11-20), and titled "Rules Relating to Public Water Systems". All public water systems are regulated by the Department of Health and shall be in compliance with the Hawaii Administrative Rules, Title 11, Chapter 20. Recommend the subdivision lots be connected to an existing public water system.

Concerns on water quality for lead, copper, algae and microbiological and chemical contaminations in private water systems have identified the need for self monitoring. The Department of Health does not support the use of these private rain catchment systems for drinking purposes since the quality may not meet potable water standards.

The Department of Health (DOH), Clean Water Branch (CWB), offers the following comments:

Permit Issuance

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March 28, 2022
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- * 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 [Hawaii 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; U.S. Environmental Protection Agency Tel: 415-947-8021; Federal Energy Regulatory Commission Tel: 866-208-3372; U.S. Coast Guard Office of Bridge Programs 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 located 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).

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-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 coverage, 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.

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- Violations of Hawaii Revised Statutes 342D and 342E may elicit administrative, civil and criminal penalties for such violations.

Polluted Runoff Control

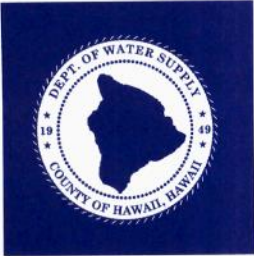
- Manage projects identified in watershed-based plans that reduce polluted runoff and educate the public about nonpoint source pollution. Projects are selected through an annual request for proposals. Funding is provided by the EPA through the Clean Water Act. For more information on projects and funding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

The applicant would need to meet the requirements of our Department of Health Air Pollution Rules, Chapter 60.1, Title 11, State of Hawaii 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 Hawaii 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.

The proposed certified kitchen needs to meet the requirements of Chapter 50, Food Safety Code. Please call our office (Ph. 933-0917) for consultation and additional information.



DEPARTMENT OF WATER SUPPLY • COUNTY OF HAWAII

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

April 1, 2022

COH PLANNING DEPT
APR 4 2022 PM 2:22

REC'D HAND DELIVERED

TO: Mr. Zendo Kern, Director
Planning Department

FROM: Keith K. Okamoto, Manager-Chief Engineer

SUBJECT: **Additional Farm Dwelling Agreement (FDA-21-000495)**
Applicant – Xiangdong Guo
Tax Map Key 2-7-010:006

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

The subject parcel does not have an existing water service with the Department, as the parcel is not within the service limits of the Department's existing water system.

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 there be any questions, please contact Mr. Troy Samura of our Water Resources and Planning Branch at (808) 961-8070, extension 255.

Sincerely yours,

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

TS:dfg

copy – Xiangdong Guo

AFTER RECORDATION, RETURN BY MAIL TO:

County of Hawai'i Planning Department
101 Pauahi Street, Suite 3
Hilo, Hawai'i 96720

TITLE OF DOCUMENT:

ADDITIONAL FARM DWELLING AGREEMENT (FDA-21-000495)

PARTIES TO DOCUMENT:

FIRST PARTY: XIANDONG GUO

SECOND PARTY: COUNTY OF HAWAI'I

PROPERTY DESCRIPTION:

LOT 1, Por. of Onomea, S. HILO, Hawai'i
Island

TMK: (3) 2-7-010:006

ADDITIONAL FARM DWELLING AGREEMENT

THIS AGREEMENT made and executed this ____ day of _____, 2022, by and between **XIANDONG GUO**, herein called the "First Party," whose mailing address is P.O. BOX 167, PEPE'EKEO, HAWAI'I 96783-0167 and, the **COUNTY OF HAWAI'I**, herein called the "Second Party."

IT IS HEREBY AGREED that the First Party may construct one additional farm dwelling (note: the additional farm dwelling of this agreement is the approved second additional farm dwelling; and, in chronological and numerical order, the second additional farm dwelling is also the second single-family dwelling) located on the real property of LOT 1. The property LOT 1 is described as a portion of ONOMEA, S. HILO, HAWAI'I , Island of Hawai'i, containing 15.1780 ACRES or 661,154 SQUARE FEET of LOT 1, **Tax Map Key (3) 2-7-010:006**, situated in the State Land Use AGRICULTURAL DISTRICT and zoned A-20a by the Second Party.

IT IS HEREBY ACKNOWLEDGED that the First Party FEE OWNER is the legal owner of the property described above.

IT IS HEREBY FURTHER AGREED that this approval to construct one additional farm dwelling is given subject to the following conditions:

1. The additional farm dwellings shall be used to provide shelter to person(s) involved in the agricultural or farm-related activity on the property. Family members who are not engaged in agricultural or farm-related activity 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. This agreement shall include any and all conditions specified in the Additional Farm Dwelling Agreement letter, attached to this document as Exhibit: "A".

IT IS HEREBY FURTHER AGREED that this agreement shall run with the land and apply to a lessee or tenant of the lot or of any portion of LOT 1.

IT IS HEREBY FURTHER AGREED that should the pertinent provisions of the State and County laws, rules, and regulations change to authorize said farm dwelling, upon request of the First Party, this Agreement may be reconsidered for possible amendment and/or severance.

IT IS HEREBY FURTHER AGREED, for the property, LOT 1, situated within the State Land Use AGRICULTURAL DISTRICT, any land use and zoning violations that is determined by the Second Party to be caused by the First Party, a LESSEE or a TENANT, the Second Party may impose fines in violation of Hawai'i Revised Statutes section 205-4.5. If the violation is not corrected within six months of such citation and the violation continues, a citation for a new and separate violation may be imposed. There shall be a fine of not more than \$5,000 for a first violation; for any additional violation, there shall be a fine of not more than \$5,000. The Second Party may also impose fines for any violation of Hawai'i County Code Chapter 25, as amended, according to the procedures and fine schedule of Hawai'i County Code – Zoning Code sections 25-2-30 through -2-36.

IN CONSIDERATION OF THE AFORESAID, the Second Party hereby approves this Agreement to be in conformity with Hawai'i Revised Statutes sections 205-2 and 205-4.5, consistent with the permitted uses of the State Land Use Agricultural district. This Agreement also conforms to Hawai'i County Code Chapter 25, as amended.

IN WITNESS WHEREOF, the parties have executed this agreement on the day and year first above written.

FIRST PARTY:

XIANDONG GUO, Landowner

SECOND PARTY:

ZENDO KERN, Planning Director
County of Hawai'i Planning Department

STATE OF HAWAI'I)
) SS.
COUNTY OF HAWAI'I)

On this _____ day of _____, 2022 before me personally
appeared XIANDONG GUO to me known to be the person described herein and who
executed the foregoing instrument, and acknowledged that he executed the same as his
free act and deed.

Notary Public, State of Hawai'i

My commission expires: _____

Additional Farm Dwelling Agreement Instructions

Attached is the Additional Farm Dwelling Agreement form for your approved application. It is important that you follow these instructions in the completion of the form. Failure to complete and submit a properly completed agreement form to the Planning Department for recordation with the Bureau of Conveyances may cause your Additional Farm Dwelling Agreement to be rejected by the Bureau and delay approval of your application for a building permit for the additional farm dwelling. Building permit applications for additional farm dwellings will not be approved by the Planning Department until the AFDA form and the required submittals specified below have been returned to the Planning Department. You may make as many copies of the AFDA document for your records as necessary. A copy of the final recordation page will be available from the Planning Department when received back from the Bureau of Conveyances upon request.

1. All persons in the "First Party" must sign before a Public Notary in the appropriate location on the signature page (Page 5). Photocopies of this page may be made and sent to any persons listed on the page whose notarized signatures are required and then attached to the agreement document along with the original signature page. Facsimiles or FAX copies of signatures will not be accepted.

Note: All signatures must be the same as the typed name. Therefore, if John L. Doe is the name typed the signature must also be John L. Doe. Signing John Doe or Jonathan L. Doe will cause the agreement document to be rejected by the Bureau of Conveyances for recordation purposes.

2. The date on page 2 will be filled in when the agreement is signed by the Planning Director; please leave it blank.
3. Enclose a check or money order in the amount of **\$41.00**, made payable to the Bureau of Conveyances, for the recordation fee. (One payment needed. Please designate who will submit)
4. Return the **original** completed AFDA document with all required signatures and the recordation fee payment to the Planning Department for the Director's signature and submittal to the Bureau of Conveyances for recordation.