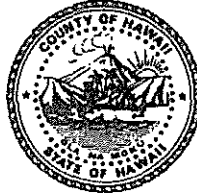


Harry Kim
Mayor



Christopher J. Yuen
Director

Brad Kurokawa, ASLA
LEED® AP
Deputy Director

County of Hawaii
PLANNING DEPARTMENT

101 Pauahi Street, Suite 3 • Hilo, Hawaii 96720-4224
(808) 961-8288 • FAX (808) 961-8742

December 17, 2007

Waialae Falls, LLC
Attn: Patrick Hart, Manager
HC 2 Box 9532
Keaau, Hawaii 96749

Dear Mr. Hart:

SUBJECT: Additional Farm Dwelling Agreement (FDA-07-000194)
Applicants: Waialae Falls, LLC (Patrick Hart, Manager)
Land Owners: Waialae Falls, LLC (Patrick Hart, Manager)
State Land Use: Agricultural
County Zoning: A-20a
Land Area: 30.92 Acres
Tax Map Key: (3) 2-7-038:014

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. Names, address and signatures of the applicants/landowners.
2. A farm plan or evidence of the applicant's continual agricultural productivity or farming operation within the County, including an explanation of why this AFD is needed in connection with the agricultural productivity or farming operation.

Your farm plan included the following ongoing income producing agricultural activities:

(a) Ongoing agricultural activities include the following:

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- i. The applicants started 1,000 cacao trees and 400 coffee trees from seed within an existing greenhouse. The trees are currently being planted on approximately 1.5 acres and should begin to produce within 2-4 years.
 - ii. The cacao requires approximately 30 hours per week, year-round to maintain, harvest, process and transport to Kona.
 - iii. The maintenance of the coffee requires 4 hours per week year-round to maintain and 19 hours per week for harvesting and transporting during the picking season.
 - iv. Annual income from the crops is anticipated to be \$24,000 before expenses.
3. In support of the application, evidence of a State of Hawaii Department of Taxation's General Excise Tax License and a copy of an annual membership to the Farm Supply Cooperative have 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, in its present configuration, was created by subdivision (SUB 5342) approved on December 27, 1985. Since the subdivision was a consolidation and resubdivision of existing lots that did not create any additional lots, HRS §205-4.5(b) allows the first dwelling on the lot to be a single-family dwelling.
3. The Farm Plan, GE Tax License (ID number W20205716-01), 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 that the income will be taxed.

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4. In addition, the following agencies have submitted their comments as stated below:

(a) Department of Water Supply (DWS) (Letter dated November 7, 2007):

“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 objection 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. Ryan Quitariano of our Water Resources and Planning Branch at 961-8070, extension 256.”

(b) Real Property Tax Office (RPT):

RPT did not comment on this application as of this date.

(c) Department of Health (DOH) (Memorandum dated November 7, 2007):

“The use of individual wastewater systems is allowed. The type and number of individual wastewater systems to be used will be determined at the time of building permit application.

The Department of Health (DOH), Clean Water Branch (CWB), acknowledges receipt of the subject document on October 30, 2007. The CWB has reviewed the limited information contained in the subject document and offers the following comments:

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1. The Army Corps of Engineers should be contacted at (808) 438-9258 for this project. Pursuant to Federal Water Pollution Control Act (commonly known as the 'Clean Water Act' (CWA)), Paragraph 401(a)(1), a Section 401 Water Quality Certification (WQC) is required for '[a]ny applicant for Federal license or permit to conduct any activity including, but not limited to, the construction or operation of facilities, which may result in any discharge into the navigable waters...'. The term 'discharge' is defined in CWA, Subsections 502(16), 502(12), and 502(6); Title 40, Code of Federal Regulations, Section 122.2, and Hawaii Administrative Rules (HAR), Chapter 11-54.
2. In accordance with HAR, Sections 11-55-04 and 11-55-34.05, the Director of Health may require the submittal of an individual permit application or a Notice of Intent (NOI) for general permit coverage authorized under the National Pollutant Discharge Elimination System (NPDES).
 - a. An application for an NPDES individual permit is to be submitted at least 180 days before the commencement of the respective activities. The NPDES application forms may also be picked up at our office or downloaded from our website at:
<http://www.hawaii.gov/health/environmental/water/cleanwater/forms/indiv-index.html>
 - b. An NOI to be covered by an NPDES general permit is to be submitted at least 30 days before the commencement of the respective activity. A separate NOI is needed for coverage under each NPDES general permit. The NOI forms may be picked up at our office or downloaded from our website at:
<http://www.hawaii.gov/health/environmental/water/cleanwater/forms/genl-index.html>
 - i. Storm water associated with industrial activities, as defined in Title 40, Code of Federal Regulations, Sections 122.26(b)(14)(i) through 122.26(b)(14)(ix) and 122.26 (b)(14)(xi). [HAR, Chapter 11-55, Appendix B]

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- ii. Construction activities, including clearing, grading, and excavation, that result in the disturbance of equal to or greater than one (1) acre of total land area. The total land area includes a contiguous area where multiple separate and distinct construction activities may be taking place at different times on different schedules under a larger common plan of development or sale. An NPDES permit is required before the commencement of the construction activities. [HAR, Chapter 11-55, Appendix C]
- iii. Discharges of treated effluent from leaking underground storage tank remedial activities. [HAR, Chapter 11-55, Appendix D]
- iv. Discharges of once through cooling water less than one (1) million gallons per day. [HAR, Chapter 11-55, Appendix E]
- v. Discharges of hydrotesting water. [HAR, Chapter 11-55, Appendix F]
- vi. Discharges of construction dewatering effluent. [HAR, Chapter 11-55, Appendix G]
- vii. Discharges of treated effluent from petroleum bulk stations and terminals. [HAR, Chapter 11-55, Appendix H]
- viii. Discharges of treated effluent from well drilling activities. [HAR, Chapter 11-55, Appendix I]
- ix. Discharges of treated effluent from recycled water distribution systems. [HAR, Chapter 11-55, Appendix J]
- x. Discharges of storm water from a small municipal separate storm sewer system. [HAR, Chapter 11-55, Appendix K]

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- xi. Discharges of circulation water from decorative ponds or tanks. [HAR, Chapter 11-55, Appendix L]
3. In accordance with HAR, Section 11-55-38, the applicant for an NPDES permit is required to either submit a copy of the new NOI or NPDES permit application to the State Department of Land and Natural Resources, Historic Preservation Division (SHPD), or demonstrate to the satisfaction of the DOH that the project, activity, or site covered by the NOI or application has been or is being reviewed by SHPD. If applicable, please submit a copy of the request for review by SHPD or SHPD's determination letter for the project.
4. Any discharges related to project construction or operation activities, with or without a Section 401 WQC or NPDES permit coverage, shall comply with the applicable State Water Quality Standards as specified in HAR, Chapter 11-54.

Hawaii Revised Statutes, Subsection 342D-50(a) requires that '[n]o person, including any public body, shall discharge any water pollutants into state waters, or cause or allow any water pollutant to enter state waters except in compliance with this chapter, rules adopted pursuant to this chapter, or permit or variance issued by the director.'

If you have any questions, please contact Mr. Alec Wong, Supervisor of the Engineering Section, CWB, at (808) 586-4309.

We recommend that you review all of the Standard Comments on our website: www.state.us/health/environmental/env-planning/landuse/landuse.html. Any comments specifically applicable to this project should be adhered to."

Decision:

In view of the above, your request to construct a **second (first AFD) dwelling** on the property is approved subject to the following conditions:

1. The AFD 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.

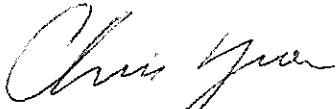
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2. The agreement shall run with the land and apply to all persons who may, now or in the future, use or occupy the additional farm dwelling. The enclosed AFD Agreement must be returned to the Planning Department with the appropriate notarized signatures along with a check made out to the Bureau of Conveyances in the amount of \$25.00 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 accepted for recordation.
3. In reference to the DWS comment, may we suggest the following:
 - a. Any dwelling not serviced by a County water system should be provided with and maintain a private potable rain catchment system which includes a minimum 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.
 - b. Any dwelling on a water catchment system should be provided with and maintain an additional 3,000 gallon water storage capacity for fire fighting and emergency purposes. The emergency water supply system, including the necessary compatible connector system and location of the water storage facility on the property, should meet with the approval of the Hawaii County Fire Department.
4. 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 shall be adhered to.
5. Your AFDA has been approved based on existing agricultural activity as summarized previously in this letter.
6. The First Party shall allow the Second Party or its representative to inspect the farm upon reasonable prior notice.
7. This AFDA shall be valid for a period of two (2) years from the date of this approval letter to secure a BP for the additional farm dwelling. Failure to secure a BP for this additional farm dwelling on or before December 18, 2009, may cause the Director to initiate proceedings to invalidate the AFDA.

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Attn: Patrick Hart, Manager
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Should you have any questions, please feel free to contact Jonathan Holmes of this Department.

Sincerely,



CHRISTOPHER J. YUEN
Planning Director

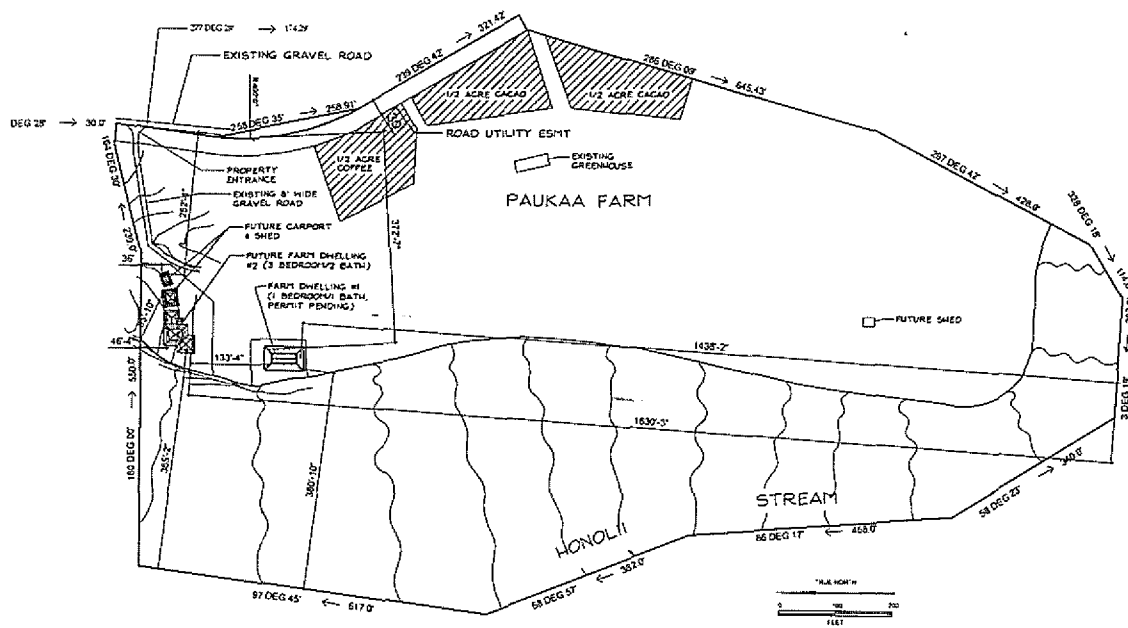
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Enclosures: AFDA document
AFDA document instruction sheet

xc: Mr. Milton Pavao, DWS
Mr. Mike McCall, RPT

WAIALAE FALLS, LLC.



FARM PLAN

SCALE: 1" = 100'

VALERIE C. SIMPSON, ARCHITECT & ASSOCIATES

ARCHITECT'S OFFICE
55 KALAKAUA STREET
HILO, HAWAII 96720

HC 3 BOX 14259
KEA'AU, HAWAII 96749

PHONE (808) 935-1743
FAX (808) 935-4040

This work was prepared by me
or under my supervision.
Consent of the architect
to certify the work.

WAIALAE FALLS, LLC
FARM PLAN
LOT 14, PAUKAA FARM
PAUKAA, SOUTH HILO, HAWAII
TMS: 2738314

REVISIONS	BY
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PROJECT NUMBER 601

DRAWN BY VCS

DATE 10/11/07

SHEET

T-1

1 OF 1 SHEETS