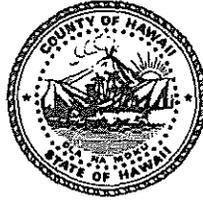


Harry Kim
Mayor



Christopher J. Yuen
Director

Brad Kurokawa, ASLA, LEED™ AP
Deputy Director

County of Hawaii

PLANNING DEPARTMENT

Aupuni Center • 101 Pauahi Street, Suite 3 • Hilo, Hawaii 96720
Phone (808) 961-8288 • Fax (808) 961-8742

September 9, 2008

Mr. Klaus D. Conventz
Baumeister Consulting
PO Box 2308
Kailua-Kona, HI 96745-2308

Dear Mr. Conventz:

SUBJECT: Additional Farm Dwelling Agreement Application (FDA-08-000202)
(formerly FDA-08-000202 and FDA-08-000203)

Applicant:	Resolute, Inc.
Owner:	Resolute, Inc.; Golden Bay International Co., Ltd; Theodore C. Knowles; John E. Buck; Deborah Butterfield
State Land Use:	Agriculture
County Zoning:	Agricultural (A-20a)
Land Area:	500.734 acres
TMK:	(3) 7-6-001:001

CONDITIONAL APPROVAL OF APPLICATION

This letter supersedes our August 28, 2008 letter to you regarding the above-referenced matter. In so doing, it amends certain statements and provisions set forth in that previous letter.

Pursuant to authority conferred to the Planning Director by Chapter 25, Article 5, Division 7, Section 25-5-77 of the Zoning Code (Hawaii County Code, Chapter 25) and Planning Department Rule 13, Farm Dwellings, we have reviewed your application for an Additional Farm Dwelling Agreement (AFDA) for the third and fourth farm dwellings on the subject property (the Property). For administrative purposes, we have consolidated the two previously assigned AFDA application file numbers into one: FDA-08-000202.

Following recent discussions between you and this office regarding the applicant's farm plan and certain amendments proposed thereto, we have reconsidered and amended our earlier decision to deny the above-referenced application ("the application"), as we had set forth in our letter to you dated March 17, 2008. We hereby approve your application for an AFDA subject to certain conditions set forth below.

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. Your farm plan included the following ongoing and proposed agricultural activities:
 - (a) Ongoing agricultural activities include the following:
 - i. Applicant is not conducting any existing agricultural activity on the Property. Applicant has disclosed that there are thirty-two (32) head of cattle and six (6) horses, owned and managed by a separate co-owner in a different portion of the subject property from that to be used and occupied by the applicant and is not included in the applicant's farm plan.
 - (b) Proposed agricultural activities include the following:
 - i. *Coffee Orchard*. Clearing existing overgrowth, planting and establishing a ten-acre coffee orchard at a density of approximately 194 coffee trees per acre. Hardwood (koa) trees may be inter-planted in the low density coffee orchard, to be determined later by the applicant.
 - ii. *Hardwood Tree Farm*. Planting and establishment of a hardwood (koa) tree farm over fifty-seven (57) acres at a density of approximately 435 trees per acre.
 - iii. *Cattle Ranching*. As an optional agricultural activity not a part of this farm plan, the applicant may clear existing brush and trees to establish cattle pasturage and paddocks over portions of the Property sufficient for maintenance of approximately fifty head of cattle. Improvements would include fencing, water and related infrastructure and facilities. If implemented this activity and its improvements would not conflict with or impinge upon the farm plan for coffee and hardwood tree farming.
 - iv. A ten-acre expansion of either (a) the coffee orchard at a similar or greater planting density or (b) the hardwood tree farm, after approximately five years following plantings.
3. As evidence of existing agricultural business activity, a copy of the applicant's State of Hawaii General Excise (GE) Tax License has also been presented.
4. A Certificate of Clearance for the subject property was provided from the County's Department of Finance, Real Property Tax Division.

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.** (emphases added)
2. The subject lot was created by subdivision (SUB 7070) approved on January 13, 1999, which, pursuant to HRS §205-4.5(b), requires the first dwelling on the lot to be a farm dwelling. There were no permitted dwellings on the Property prior to that subdivision.
3. Building permit No. 035409 was issued on April 1, 2003 to co-owner John Buck et al for the first dwelling, as a farm dwelling, together with accessory structures.
4. An Additional Farm Dwelling Agreement Application (FDA-06-000099) for a second farm dwelling was approved (but has not yet been permitted or constructed) for the Property on June 6, 2007, subject to compliance with certain conditions, including the development of twenty (20) acres of coffee and pasturage and maintenance of 10-20 head of cattle.
5. On February 15, 2008, building permit No. 035409 was closed (finalized as completed) as to the permitted accessory structures and withdrawn by co-owner John Buck as to the un-built main dwelling structure allowed by that permit. A new building permit application for a re-designed dwelling was concurrently submitted by the same party.
6. Building Permit No. B2008-0560K was issued on April 14, 2008 to co-owner John Buck Property for the first farm dwelling on the Property, in lieu of that party's withdrawn and voided building permit No. 035409.
7. The following agencies have submitted comments on the application as re-stated below:
 - (a) Department of Water Supply (DWS) (letter dated February 13, 2008):

“We have reviewed the subject application and have the following information.

The property does not have an existing water service with the Department as the parcel is beyond the service limits of the Department's existing water system. The subject property is also situated at an elevation such that the Department's existing water facilities cannot provide water at adequate pressure and volume.

Therefore, the Department has no objections to the proposed application, as the applicant indicates that the additional farm dwellings will be on a water catchment system.

Should there be any questions, please call Mr. Ryan Quitariano of our Water Resources and Planning Branch at 961-8070, extension 256.”
 - (b) Department of Health (DOH) (Memorandum dated February 15, 2008):

“The DOH’s Safe Drinking Water Branch authority is based on the definition of a ‘public water system’...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 DOH does not support the use of these private rain catchment systems for drinking purposes since the quality may not meet potable water standards.

“We recommend that you review all of the Standard Comments on our website: www.state.hi.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 **third and fourth** farm dwelling is approved subject to the following conditions:

1. The additional farm dwellings shall only be used to provide shelter for persons involved in the agricultural or farm-related activity on the building site specified in the farm plan. Family members who are not engaged in agricultural or farm-related activities are allowed to reside in the farm dwellings.
2. The agreement shall run with the land, and shall include and be executed by all persons holding an ownership interest in the Property (all such persons are hereinafter collectively referenced as “the First Party”). It shall apply to all persons who may, now or in the future, use or occupy the additional farm dwellings.
3. The agreement does not amend or replace that certain Additional Farm Dwelling Agreement for the Property executed on June 6, 2007 between the First Party and the County of Hawaii, pursuant to Application No. FDA-06-000099 for the second farm dwelling on the Property. Each Additional Farm Dwelling Agreement pertaining to the Property shall be severable from any other agreement except as may be specifically provided therein.
4. The enclosed Additional Farm Dwelling Agreement (“AFDA”) must be returned to the Planning Department with the appropriate notarized signatures of the First Party along with a check made out to the Bureau of Conveyances in the amount of \$25.00 in accordance with the enclosed Additional Farm Dwelling Agreement Instructions.

In addition to other restrictions on building permit applications as set forth in Condition No. 5 below, the Planning Department will not approve a building permit application for the additional dwelling until the fully executed AFDA document with all required attachments has been received by the Planning Department and accepted as being complete, properly executed and suitable for recordation at the Bureau of Conveyances.

5. The First Party 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.
6. **Conditions of Approval to be satisfied prior to applications for Building Permits:**
 - (a) Prior to submitting an application for a building permit for the third farm dwelling on the Property (being the first of the two dwellings authorized by the AFDA), the applicant shall have established, according to the specifications set forth in the farm plan, one (1) acre of coffee and two (2) acres of koa.
 - (b) Prior to submitting an application for a building permit for the fourth farm dwelling on the Property (being the second of the two dwellings authorized by the AFDA), the applicant shall have established, according to the specification of the farm plan, two (2) additional acres of coffee and two (2) additional acres of koa.
7. Your Additional Farm Dwelling Agreement has been approved based entirely on your proposed agricultural activity as summarized previously in this letter. It is required that the First Party to the Agreement shall have implemented at least fifty percent (50%) of the proposed farm plan within three (3) years of approval of the building permit for the fourth farm dwelling. The Second Party to the Agreement (the County of Hawaii Planning Department) may allow time extensions and modifications for good cause shown by First Party.
8. The First Party shall allow the Second Party or its representative to inspect the farm for compliance with the conditions of this approval prior to approval of building permit applications for the third and fourth farm dwellings, respectively, and later during the term of the Agreement upon reasonable prior notice.
9. This Additional Farm Dwelling Agreement shall be valid for a period of:
 - (a) Two (2) years from the date of this approval letter to secure a building permit for the third farm dwelling (being the first of the two dwellings authorized by this AFDA), and
 - (b) Five (5) years from the date of this approval letter to secure a building permit for the fourth farm dwelling (being the second of the two dwellings authorized by the AFDA).

Failure to secure a building permit for the third farm dwelling on or before September 9, 2010 may cause the Director to initiate proceedings to invalidate the AFDA. Failure to secure a building permit for the fourth farm dwelling on or before September 9, 2013 may cause the Director to invalidate the AFDA as to the permissibility of the fourth farm dwelling only.

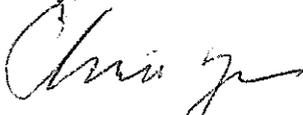
Mr. Klaus D. Conventz
September 9, 2008
Page 6

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.

Should you have any questions, please contact Keola Childs of our West Hawaii office at 327-3510.

Sincerely,



CHRISTOPHER J. YUEN
Planning Director

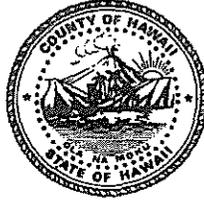
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Enclosure: AFDA document
AFDA document instruction sheet

xc: Mr. Milton Pavao, DWS
Mr. Mike McCall, RPT
Planning Department – Kona

Harry Kim
Mayor



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August 28, 2008

Mr. Klaus D. Conventz
Baumeister Consulting
PO Box 2308
Kailua-Kona, HI 96745-2308

Dear Mr. Conventz:

SUBJECT: Additional Farm Dwelling Agreement Application
(FDA-08-000202 and FDA-08-000203)
Applicant: Resolute, Inc.
Owner: Resolute, Inc.; Golden Bay International Co., Ltd;
Theodore C. Knowles; John E. Buck; Deborah Butterfield
State Land Use: Agriculture
County Zoning: Agricultural (A-5a)
Land Area: 500.734 acres
TMK: (3) 7-6-001:001

CONDITIONAL APPROVAL OF APPLICATION

Pursuant to authority conferred to the Planning Director by Chapter 25, Article 5, Division 7, Section 25-5-77 of the Zoning Code (Hawaii County Code, Chapter 25) and Planning Department Rule 13, Farm Dwellings, we have reviewed your application for an Additional Farm Dwelling Agreement (AFDA) for the third and fourth farm dwellings on the subject property (the Property).

Following recent discussions between you and this office regarding the applicant's farm plan and certain amendments proposed thereto, we have reconsidered and amended our earlier decision to deny the above-referenced application ("the application"), as we had set forth in our letter to you dated March 17, 2008. We hereby approve your application for an AFDA subject to certain conditions set forth below.

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. Your farm plan included the following ongoing and proposed agricultural activities:
 - (a) Ongoing agricultural activities include the following:
 - i. Applicant has stated that there are thirty-two (32) head of cattle and six (6) horses, owned and managed by a separate co-owner in a different portion of the subject property from that to be used and occupied by the applicant and not included in the applicant's farm plan.
 - (b) Proposed agricultural activities include the following:
 - i. *Coffee Orchard.* Clearing existing overgrowth, planting and establishing a ten-acre coffee orchard at a density of approximately 194 coffee trees per acre. Hardwood (koa) trees may be inter-planted in the low density coffee orchard, to be determined later by the applicant.
 - ii. *Hardwood Tree Farm.* Planting and establishment of a hardwood (koa) tree farm over fifty-seven (57) acres at a density of approximately 435 trees per acre.
 - iii. *Cattle Ranching.* As an optional agricultural activity not a part of this farm plan, the applicant may clear existing brush and trees to establish cattle pasturage and paddocks over portions of the Property sufficient for maintenance of approximately fifty head of cattle. Improvements would include fencing, water and related infrastructure and facilities. If implemented this activity and its improvements would not conflict with or impinge upon the farm plan for coffee and hardwood tree farming.
 - iv. A ten-acre expansion of either (a) the coffee orchard at a similar or greater planting density or (b) the hardwood tree farm, after approximately five years following plantings.
3. As evidence of existing agricultural business activity, the applicant's application for a State of Hawaii General Excise (GE) Tax License has also been presented, along with a copy of a GE Tax License issued to one of the corporate officers personally.
4. A Certificate of Clearance for the subject property was provided from the County's Department of Finance, Real Property Tax Division.

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.** (emphases added)
2. The subject lot was created by subdivision (SUB 7070) approved on January 13, 1999, which, pursuant to HRS §205-4.5(b), requires the first dwelling on the lot to be a farm dwelling. There were no permitted dwellings on the Property prior to that subdivision.
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5. On February 15, 2008, building permit No. 035409 was closed (finalized as completed) as to the permitted accessory structures and withdrawn by co-owner John Buck as to the un-built main dwelling structure allowed by that permit. A new building permit application for a re-designed dwelling was concurrently submitted by the same party.
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"We have reviewed the subject application and have the following information.

The property does not have an existing water service with the Department as the parcel is beyond the service limits of the Department's existing water system. The subject property is also situated at an elevation such that the Department's existing water facilities cannot provide water at adequate pressure and volume.

Therefore, the Department has no objections to the proposed application, as the applicant indicates that the additional farm dwellings will be on a water catchment system.

Should there be any questions, please call Mr. Ryan Quitoriano of our Water Resources and Planning Branch at 961-8070, extension 256."

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“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 DOH does not support the use of these private rain catchment systems for drinking purposes since the quality may not meet potable water standards.

“We recommend that you review all of the Standard Comments on our website: www.state.hi.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 **third and fourth** farm dwelling is approved subject to the following conditions:

1. The additional farm dwellings shall only be used to provide shelter for persons involved in the agricultural or farm-related activity on the building site specified in the farm plan. Family members who are not engaged in agricultural or farm-related activities are allowed to reside in the farm dwellings.
2. The agreement shall run with the land, and shall include and be executed by all persons holding an ownership interest in the Property (all such persons are hereinafter collectively referenced as “the First Party”). It shall apply to all persons who may, now or in the future, use or occupy the additional farm dwellings.
3. The enclosed Additional Farm Dwelling Agreement (“AFDA”) must be returned to the Planning Department with the appropriate notarized signatures of the First Party along with a check made out to the Bureau of Conveyances in the amount of \$25.00 in accordance with the enclosed Additional Farm Dwelling Agreement Instructions.

In addition to other restrictions on building permit applications as set forth in Condition No. 5 below, the Planning Department will not approve a building permit application for the additional dwelling until the fully executed AFDA document with all required attachments has been recorded at the Bureau of Conveyances.

4. The First Party 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. Conditions of Approval to be satisfied prior to applications for Building Permits:

- (a) Prior to submitting an application for a building permit for the third farm dwelling on the Property (being the first of the two dwellings authorized by the AFDA), the applicant shall have established, according to the specifications set forth in the farm plan, one (1) acre of coffee and two (2) acres of koa.
 - (b) Prior to submitting an application for a building permit for the fourth farm dwelling on the Property (being the second of the two dwellings authorized by the AFDA), the applicant shall have established, according to the specification of the farm plan, two (2) additional acres of coffee and two (2) additional acres of koa.
6. Your Additional Farm Dwelling Agreement has been approved based entirely on your proposed agricultural activity as summarized previously in this letter. It is required that the First Party to the Agreement shall have implemented at least fifty percent (50%) of the proposed farm plan within three (3) years of approval of the building permit for the fourth additional farm dwelling. The Second Party to the Agreement (the County of Hawaii Planning Department) may allow time extensions and modifications for good cause shown by First Party.
 7. The First Party shall allow the Second Party or its representative to inspect the farm for compliance with the conditions of this approval prior to approval of building permit applications for the third and fourth farm dwellings, respectively, and later during the term of the Agreement upon reasonable prior notice.
 8. 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 August 28, 2010 may cause the Director to initiate proceedings to invalidate the AFDA.

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.

Mr. Klaus D. Conventz
August 28, 2008
Page 6

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.

Should you have any questions, please contact Keola Childs of our West Hawaii office at 327-3510.

Sincerely,



CHRISTOPHER J. YUEN
Planning Director

CKC:ckc

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Enclosure: AFDA document
AFDA document instruction sheet

xc: Mr. Milton Pavao, DWS
Mr. Mike McCall, RPT
Planning Department – Kona

Scanned Map
Unavailable
Due to Size

See File

