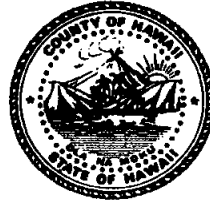


William P. Kenoi
Mayor



BJ Leithead Todd
Director

Margaret K. Masunaga
Deputy

County of Hawaii

PLANNING DEPARTMENT

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

January 12, 2011

Ms. Debra R. Sims, Trustee
Debra R. Sims Trust
84-5011 Ke Ala O Keawe Road
Captain Cook, HI 96704

Dear Ms. Sims:

SUBJECT: Additional Farm Dwelling Agreement Application (FDA-10-000285)
Applicant: DEBRA R. SIMS, Trustee under the Revocable Trust of Debra R. Sims, dated September 15, 2008
Owners: Kamehameha Schools and DEBRA R. SIMS, Trustee under the Revocable Trust of Debra R. Sims, dated September 15, 2008
State Land Use: Agricultural
County Zoning: Agricultural (A-5a)
Land Area: 10.89 Acres
TMK: (3) 8-4-009:014

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. 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 ongoing income-producing agricultural activities:

- (a) Cultivate, harvest, sell (as coffee cherry), and/or pulp, dry and store and either sell wholesale as parchment or milled green coffee or roast and sell coffee at retail, as produced by more than 1,000 coffee trees on more than two acres, plus additional land area for a coffee wet mill and drying deck.
 - (b) Cultivate, harvest and sell produce (fresh, dried or processed into other products) from 150 Mango trees and approximately 30 other fruit trees on more than two additional acres.
4. The labor man-hours for maintenance, cultivation, harvesting, processing and marketing averages, on an annual basis, more than thirty (30) hours per week.
 5. Evidence of existing engagement in agricultural productivity, in the form of a general excise tax license and receipts for gross income from product sales, has also been presented.
 6. 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, 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 was created by Subdivision No. 803 approved August 9, 1954, which, pursuant to HRS §205-4.5(b), allows the first dwelling on the lot to be a single-family dwelling.
3. The Farm Plan, General Excise Tax License, and the agreement to use the dwelling for agricultural or farm-related activity on the building site demonstrate that there is and will continue to be income-producing agricultural activity and that the income is/will be taxed.

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

(a) Department of Water Supply (Letter dated January 10, 2011):

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

Please be informed that the subject parcel is currently served by a 5/8-inch meter, which is adequate for only one dwelling at an average daily usage of 400 gallons. Inasmuch as this application is proposing an additional dwelling, the installation of a separate 5/8-inch meter will be required. Water can be made available from the Department's existing 8-inch waterline within Ke Ala O Keawe Road, fronting the subject parcel.

Therefore, the Department has no objections to the proposed application, subject to the applicant understanding and accepting the following conditions:

1. Installation by the Department of Water Supply, of a second 1-inch service lateral to service a 5/8-inch meter, which shall be restricted to a maximum daily-flow of 600 gallons.

2. Remittance of the following charges, which are subject to change, to our Customer Service Section:

FACILITIES CHARGE (FC):

2nd service to the parcel \$5,500.00

SERVICE LATERAL INSTALLATION CHARGE:

Install one meter on Ke Ala O Keawe Road, a county road \$4,000.00

Total (Subject to Change) **\$9,500.00**

3. Installation of a backflow prevention assembly (reduced pressure type) by a licensed contractor on the applicant's property just after the meter. If the existing meter does not have an approved backflow prevention assembly, the installation of one will also be required as there is existing agricultural activity on the property. The installation of the backflow prevention assembly must be inspected and approved by the Department before water service can be granted. A copy of our backflow prevention handout is being forwarded to the applicant to help them understand this requirement.

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

(b) Real Property Tax Office:

No comments were received.

(c) Department of Health (Memorandum dated December 20, 2010):

“The Department of Health's Safe Drinking Water Branch authority on drinking water quality is based on the definition of a "public water system." A "public water system" means a system which provides water for human consumption through pipe or other constructed conveyance if such system has fifteen (15) service connections or regularly serves an average of at least twenty-five (25) individuals daily at least sixty (60) days out of the year. 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.

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.

The same website also features a Healthy Community Design Smart Growth Checklist (Checklist) created by “Built Environment Working Group (BEWG) of the Hawaii 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 (sic). We also ask you to share this list with others to increase community awareness on the healthy community design.”

Decision:

In view of the above, your request to construct a **second** 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. The enclosed Additional Farm Dwelling Agreement (“AFDA”) must be returned to the Planning Department with the appropriate notarized signatures of the “Farmer” and “Kamehameha Schools” along with a check made out to the Bureau of Conveyances in the amount of \$30.00 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.
3. The Farmer and Kamehameha Schools shall comply with all other applicable rules, regulations, and requirements of the County of Hawaii Planning Department (including but not limited to the Zoning Code, Chapter 25, Hawaii County Code), Department of Public Works, Department of Water Supply, Fire Department and the State Department of Health and other reviewing agencies/divisions listed on the Building Permit Application for the additional farm dwelling.
4. A written request for installation of the second water meter required by the Department of Water Supply , together with payment in full for that Department’s required Facilities Charge and the Service Lateral Installation Charge for the second water meter, shall be made prior to submittal of an application for a building permit for the second farm dwelling. Evidence of such installation request and payment shall be provided with an application for the second farm dwelling building permit.
5. Your Additional Farm Dwelling Agreement has been approved based on your existing agricultural activities as presented in your farm plan and summarized previously in this letter. It is required that the Farmer and Kamehameha Schools, as lessee and land owner of the subject property and parties to the Additional Farm Dwelling Agreement, shall continue to carry out and maintain this farm plan for the life of the additional farm dwelling. The County of Hawaii Planning Department, as party to the Agreement, may allow modifications for good cause shown by the Farmer and Kamehameha Schools.
6. The Farmer and Kamehameha Schools shall allow the County of Hawaii or its representative to inspect the farm from time to time upon reasonable prior notice.
7. **The Farmer and Kamehameha Schools are 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 January 12, 2013.** Failure to secure a building permit for this additional farm dwelling on or before January 12, 2013 may cause the Director to initiate proceedings to invalidate the AFDA.

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We recommend that you consult with the Department of Health, of which the Kona office's phone number is 322-1963, as to acceptable individual wastewater systems for your proposed second farm dwelling prior to your preparing and submitting a building permit application.

Should you have any questions regarding the Additional Farm Dwelling Agreement, please contact Keola Childs of our West Hawaii office at 327-3510.

Sincerely,


BJ LEITHEAD TODD
Planning Director

CKC:ckc

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