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County of Hawai'i PLANNING DEPARTMENT

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June 12, 2012

Mr. Jahanshah Salehi
Mr. Tom Derryberry
77-6311 Kaumalumu Street
Hoalualoa, Hawai'i 96725

Dear Mr. Salehi and Mr. Derryberry:

SUBJECT: Additional Farm Dwelling Agreement (FDA-12-000322)
Applicant: JAHANSHAH SALEHI and TOM DERRYBERRY
Land Owner: JAHANSHAH SALEHI
State Land Use: Agricultural
County Zoning: A-5a (Agricultural, minimum building site of five acres)
Land Area: 5.45 acres
Tax Map Key: (3) 7-7-007:063 CPR Unit 2, Kaumalumu, North Kona

Pursuant to authority conferred to the Planning Director by Chapter 25 (Zoning), Article 5, Division 7, Section 25-5-77 of the Hawai'i County 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 the signatures of the applicants/landowners.
2. A farm plan or evidence of the applicants' 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 existing and proposed income-producing agricultural activities:
 - a. Existing agricultural activities include the following:
 - i. Cultivation of orange, lime, mango, avocado, and fig trees on approximately one-half acre.

- b. Proposed agricultural activities include the following:
 - i. Planting and maintenance of approximately 1,500 coffee trees on 2.32 acres;
 - ii. Propagation of sod on nearly two acres;
 - iii. Coffee cherry production is expected to return revenue of \$28,000 annually, and sod production is projected to return revenue of \$20,000 annually;
 - iv. Estimated time required to prepare and plant coffee trees will be approximately 40 hours per week, followed by 14 hours per week for maintenance. Estimated time required to develop sod farm will be 40 hours per week, followed by 8 hours per week for maintenance.
3. 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.** (emphasis added)
2. The subject lot was created after June 4, 1976, which, pursuant to HRS 205-4.5(b), requires the first dwelling on the lot to be a farm dwelling.
3. The Farm Plan 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 identified below:
 - a. Department of Water Supply (DWS) has provided comments, including but not limited to DWS inability to provide water service to the proposed additional farm

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dwelling; the AFD shall not share the existing water service (*DWS memo dated June 7, 2012, maintained in departmental TMK file*).

- b. Department of Health (DOH) has provided comments, including but not limited to information regarding water quality, and the use of individual wastewater systems (*DOH memo dated May 3, 2012, maintained in departmental TMK file*).

Decision:

In view of the above, your request to construct an **Additional Farm 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.
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 \$30.00 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. All other applicable rules, regulations, and requirements of the Planning Department (including but not limited to the Hawai'i County Code, Chapter 25, Zoning), Department of Public Works, Department of Water Supply, Fire Department and State Department of Health and any other reviewing agencies/divisions listed on the Building Permit (BP) Application shall be adhered to.
4. The applicant is responsible for any State and Federal tax consequences due to the income produced from the farm activity.
5. Your AFDA has been approved based on existing and proposed agricultural activity as summarized previously in this letter.
6. The First Party (as identified in the Additional Farm Dwelling Agreement) shall allow the Second Party or its representative to inspect the farm upon reasonable prior notice.

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7. The Department of Water Supply has determined that a County approved water system is not available to support the AFD. An Additional Farm Dwelling that is not served by an approved water system may be permitted to use a water catchment system in an area that receives an annual rainfall of at least eighty (80) inches of rain per year. A minimum 9,000 gallon water catchment system for domestic consumption and fire fighting purposes shall be required for the AFD.
8. This AFDA 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 BP for this additional farm dwelling on or before June 12, 2014, may cause the Director to initiate proceedings to invalidate the AFDA.

Please feel free to contact Jonathan Holmes of this office at (808) 961-8288 or jholmes@hawaiicounty.gov should you have any further questions and/or concerns.

Sincerely,


BJ LEITHEAD TODD
Planning Director

JRH/KWR:kwr

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Enclosures: AFDA document
AFDA document instruction sheet

xc: Manager-Chief Engineer, DWS
Administrator, RPT
GIS Section (via email)

Mr. Sidney Fuke (letter only)
100 Pauahi Street, Suite 212
Hilo, Hawai'i 96720