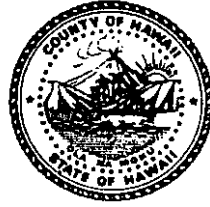


William P. Kenoi
Mayor



Duane Kanuha
Director

Bobby Command
Deputy Director

West Hawai'i Office
74-5044 Ane Keohokalole Hwy
Kailua-Kona, Hawai'i 96740
Phone (808) 323-4770
Fax (808) 327-3563

County of Hawai'i
PLANNING DEPARTMENT

East Hawai'i Office
101 Pauahi Street, Suite 3
Hilo, Hawai'i 96720
Phone (808) 961-8288
Fax (808) 961-8742

January 13, 2014

Steven S.C. Lim, Esq.
Carlsmith Ball LLP
121 Waianuenu Avenue
P.O. Box 686
Hilo, Hawaii 96721

Dear Mr. Steven S.C. Lim:

SUBJECT: Application: Additional Farm Dwelling Agreement (FDA-13-000345)
Applicant: CARLSMITH BALL LLP
Land Owner: MARY G. SCUDDER TRUST
State Land Use: Agricultural
County Zoning: A-5a (Agricultural, Minimum Building Site of 5 Acres)
Land Area: 5.858 Acres
**Tax Map Key: (3) 5-5-001:022, Kaauhuhu – Kahei Homesteads, Kahei
Kahei, North Kohala, Hawai'i**

We have received your application for Additional Farm Dwellings along with supplemental information for review, which was deemed complete as of September 27, 2013. 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 **one (1) additional farm dwelling** on the subject property and have **approved** your request subject to the following.

BACKGROUND INFORMATION

1. **Subject Property:** 55-1120 Ka 'auhuhu Road, Por. Ka 'auhuhu-Kahei Homesteads, Kahei, North Kohala, Hawai'i.
2. **Lot Size:** 5.858 acres.
3. **State Land Use:** Agricultural.
4. **County Zoning:** A-5a (Agricultural, minimum building site of five acres).

5. **Existing Agricultural Activity:** Multiple citrus trees, several cacao starters, approximately 38 heads of sheep, hand clearing of overgrown brush area for the production of truck crops, banana, and papaya starters.
6. **Proposed Request:** One Additional Farm Dwelling.
7. Farm Plan includes the following existing and proposed income-producing agricultural activities:
 - a. Maintaining 38 heads of sheep on approximately 2.0 acres;
 - b. Increase the flock to \pm 63 heads;
 - c. Introduce papayas, pineapples and bananas;
 - d. Introduction of truck crops to include, but not limited to, bush beans, soy beans, carrots, tomatoes and cucumbers;
 - e. Introduce specialty herbs and coffee, tea and cacao.
8. Estimated time required:
 - a. The farm activity will require a minimum of sixteen (16) hours per week
9. Supplemental Information:
 - a. GE Tax License Information
 - b. Receipt for Equipment Rental dated 4/13/12
 - c. Receipt for Power Pruner dated 11/03/11
 - d. Receipt of purchases dated 06/30/12
 - e. Receipt for Backhoe Rental date 8/18/11
 - f. Receipt for purchase of Neem Cake Fertilizer dated 2/24/12
 - g. Letter dated June, 2013 from Bamboo Restaurant & Gallery stating their intent to buy produce from the Gail Scudder.
10. **Rationale for Establishing AFD:** To accommodate farm workers, the daughter and son-in-law.

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 prior to 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 or will be 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 dwelling, although there is water service to the existing farm dwelling. There is no objection to the use of a private rainwater catchment system, subject to the applicant understanding that the existing water service shall not be shared in any way with the additional farm dwelling. (See attached copy of DWS memo dated November 6, 2013.)
 - b. Department of Health (DOH) has provided comments regarding soil quality of former sugarcane lands. (See attached copy of DOH memo dated October 31, 2013.)

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 proposed 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, which state that the additional dwelling shall be used for farm-related purpose.
4. 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 shall 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 \$31.00 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.**
5. A written annual progress report shall be submitted to this department for the duration of **five (5)** years. The annual progress report shall include photos, purchase receipts, sales receipts, and any additional information as requested by the Planning Director.
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 representative to inspect the farm upon reasonable prior notice.
8. DWS has determined that a County approved water system is not available to support the AFD at this time. 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.
9. 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.
10. 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 December 16, 2015, may cause the Director to initiate proceedings to invalidate the AFD.

Steven S.C. Lim, Esq.
Carlsmith Ball LLP
Page 5
January 13, 2014

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,



DUANE KANUHA
Planning Director

JRH/AK:nci

P:\Admin Permits Division\AFDA\2013\55001022 Scudder FDA-13-000345\Apvl\Scudder55001022Aprvl.doc

Enclosures: AFDA document
AFDA document instruction sheet
DWS and DOH Comment Letters

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

NEIL ABERCROMBIE
GOVERNOR
PLANNING DEPARTMENT
345 KĒKŪANAŌA STREET, SUITE 20
HILO, HAWAII 96720

2013 NOV - 1 AM 8:21



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

LORETTA J. FUDDY, A.C.S.W., M.P.H.
Director of Health

MEMORANDUM

DATE: October 31, 2013

TO: Duane Kanuha
Planning Director, County of Hawaii

FROM: Newton Inouye NY
District Environmental Health Program Chief

SUBJECT: Application: Additional Farm Dwelling Agreement (FDA-13-000345)
Applicant: CARLSMITH BALL LLP
Land Owner: MARY G. SCUDDER TRUST
State Land Use: Agricultural
County Zoning: A-5a (Agricultural, Minimum Building Site of 5 Acres)
Land Area: 5.858 Acres
Tax Map Key: (3) 5-5-001:022. Kaauhuhu - Kabei Homesteads,
N. Kohala, Hawaii

Lands formerly used for sugarcane production are now being developed into communities where residential homes, schools and commercial businesses are being constructed. Chemicals associated with the sugarcane industry persist in soil today and may be a threat to public health and the environment. Elevated arsenic levels were discovered in soil at former sugarcane production areas on the islands. The HEER Office has identified former sugarcane production areas for assessment throughout the state and plans to work with property owners to conduct environmental assessments to identify and address elevated soil arsenic levels prior to finalizing development plans for the properties.

We recommend that you review all of the Standard Comments on our website:
<http://hawaii.gov/healthy/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 Build Environment Working Group (BEWG) of the Hawaii State

088349



DEPARTMENT OF WATER SUPPLY • COUNTY OF HAWAII
345 KĒKŪANAŌA STREET, SUITE 20 • HILO, HAWAII 96720
TELEPHONE (808) 961-8050 • FAX (808) 961-8657

November 6, 2013

TO: Mr. Duane Kanuha, Director
Planning Department

FROM: Quirino Antonio, Jr., Manager-Chief Engineer

SUBJECT: ADDITIONAL FARM DWELLING AGREEMENT (FDA 13-000345)
APPLICANT - CARLSMITH BALL LLP
TAX MAP KEY 5-5-001:022

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

Inasmuch as this application is proposing an additional dwelling, the installation of a separate 5/8-inch meter is typically required. However, water availability in the subject area is limited to just one unit of water served through a 5/8-inch meter. The subject parcel has an existing 5/8-inch service and additional water is not available.

In view of the above, the Department cannot support the request for an additional farm dwelling. Extensive improvements and additions, which may include, but not be limited to, source, storage, booster pumps, transmission, and distribution facilities would need to be constructed. Currently sufficient funding is not available from the Department for such improvements, no plan exists, and no time schedule is set.

Should the application be approved on the basis of an alternate water source such as water catchment, at no time shall the two dwellings share the same 5/8-inch water service and the plumbing between the two dwellings shall not be interconnected in any way.

In addition, parcels with county water service that are engaged in agricultural activity or that have storage tanks for water (or chemical fertilizers) are required to have a backflow prevention assembly. If one is not already installed on the existing service then one shall be installed per DWS standards.

Should there be any questions, please contact Mr. Lawrence Beck of our Water Resources and Planning Branch at 961-8070, extension 260.

Sincerely yours,

Quirino Antonio, Jr., P.E.
Manager-Chief Engineer

LB:dfg

copy - Mr. Steven S.C. Lim

088457

... Water, Our Most Precious Resource ... Ka Wai A Kane ...
The Department of Water Supply is an Equal Opportunity provider and employer

Duane Kanaha
October 31, 2013
Page 2 of 3

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 redevelopment projects. We also ask you to share this list with others to increase community awareness on healthy community design.

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 4). Photocopies of pages 4 and 5 may be made and sent to any person(s) listed 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. Enclose a check or money order in the amount of \$31.00, made out to the Bureau of Conveyance for the recordation fee.
3. 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.

AFTER RECORDATION, RETURN BY MAIL TO:

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

TITLE OF DOCUMENT:

ADDITIONAL FARM DWELLING AGREEMENT (FDA-13-000345)

PARTIES TO DOCUMENT:

FIRST PARTY: MARY G. SCUDDER TRUST

SECOND PARTY: COUNTY OF HAWAI'I

PROPERTY DESCRIPTION:

TMK: (3) 5-5-001:022

ADDITIONAL FARM DWELLING AGREEMENT

THIS AGREEMENT made and executed this ___ day of _____, 20___, by and between **MARY G. SCUDDER**, herein called the "First Party," whose mailing address is P.O Box 669, Kapaau, Hawaii 96755 and the **COUNTY OF HAWAI'I**, herein called the "Second Party."

IT IS HEREBY AGREED that the First Party may construct a second and third farm dwelling located on the property described by Tax Map Key (3) 5-5-001:022, situated within the State Land Use Agricultural district and zoned Agricultural (A-5a) by the Second Party.

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

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 if this agreement is with a lessee, the legal owner shall be a party to this agreement.

IT IS HEREBY FURTHER AGREED that should the pertinent provisions of the State and County laws and 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 that if the property is situated within the State Land Use Agricultural district, the Second Party may impose a fine of not more than \$5,000 for violation of Section 205-4.5, Hawaii Revised Statutes. 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 any additional violation. The Second Party may also impose fines for any violation of Chapter 25, Hawai'i County Code, as amended, in accordance with the procedures and fine schedule outlined in Division 3, Article 2, of said code.

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

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

FIRST PARTY:

MARY G. SCUDDER, Landowner

SECOND PARTY:

DUANE KANUHA, Planning Director
County of Hawai'i Planning Department

