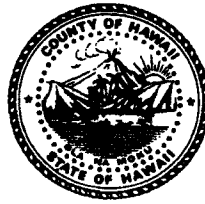


Mitchell D. Roth
Mayor

Lee E. Lord
Managing Director

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



County of Hawai'i
PLANNING DEPARTMENT

Zendo Kern
Director

Jeffrey W. Darrow
Deputy Director

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

April 19, 2021

Keith Winnie
Keith Winnie Architecture Inc.
75-638 Makapono Place
Kailua-Kona, HI 96740

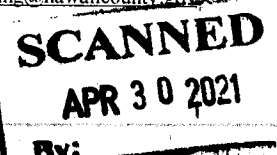
Dear Mr. Winnie:

Additional Farm Dwelling Agreement (FDA-21-000487)
Applicant Keith Winnie Architecture Inc.
Owner(s) Richard S. Prodan
State Land Use: Agricultural
County Zoning: Agricultural (A-5a)
Land Area: 5.026 Acres
TMK: (3) 7-7-004:079, Lot 15 (COR-20-137086)

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.

We are reviewing this application per the March 24, 2020 Supplemental Emergency Proclamation from Mayor Harry Kim that states under Item (2) Permit Deadlines and Automatic Approvals - "any deadline or automatic approval imposed by the Hawaii County Code or an administrative Rule of any County Department, officer, board, committees, and/or commissions is hereby continued to the latter of the following: 60 days after the date of this Second Supplementary Emergency Proclamation, dated March 24, 2020, as may be extended; or 60 days from the date of the current deadline or automatic approval date."

After review of the proposed request, the Planning Department has determined that the proposed additional farm dwelling and related improvements, on the subject property is consistent with the approval of SMA Use Permit no. 398, that allowed the development of a 15-Lot Minimum 5-Acre Agricultural Lots and Related Improvements, and per Condition no. 5, allows a maximum



of two single family and/or farm dwellings on each lot. However, it is the landowner's responsibility to adhere to all of the stated conditions of approval of SMA 398.

BACKGROUND INFORMATION

1. **Subject Property:** Portion of Holualoa 3rd-Kaunalumalu-Beach Sec., North Kona, Island of Hawai'i, Hawai'i.
2. **Lot Size:** 5.026 acres, Lot 15
3. **State Land Use:** Agricultural (A).
4. **County Zoning:** A-5a.
5. **Proposed Request:** One Additional Farm Dwelling.
6. **Existing Structures:** There is a single-family dwelling, which was permitted in 2004.
7. **Building Permits:** There is a building permit of record in Real Property Tax Records for one dwelling (B2004-1548K) issued on September 27, 2004.
8. **Special Management Area (SMA):** The subject property is consistent with the approval of SMA Use Permit no. 398, that allowed the development of a 15-Lot Minimum 5-Acre Agricultural Lots and Related Improvements, and per Condition no. 5, allows a maximum of two single family and/or farm dwellings on each lot. However, it is the landowner's responsibility to adhere to all of the stated conditions of approval of SMA 398.
9. **Farm Plan:** Includes the following proposed income-producing agricultural activities.
 - a. **Proposed agricultural activities include:**
 - i. There is approximately 4.40 acres planted with a variety of crops including: 121-Mango trees, 30-Plumeria Trees, 2-Mountain Apple, 3-Sugar Apple, 18-Dragon Fruit, 2-Abill, 3-Tangerine, 1-Orange Tree, 200-Uala Sweet Potato, 5-Patches of Bananas, 1-Patch Sugar Cane, 25-Pineapple, 50-Alovera, 32-Allspice, 40-Vanilla plants (in a Shade Structure), 8-grape vines, 8-Papaya, 3-Guava, and an assortment of other crops as per plan.
10. **Evidence of Agricultural Activity:** There is evidence of existing and proposed agricultural income and expenses reported with their application, evidence of General Excise Tax License, and invoices showing expenses for related to planting the above crops.

10. **Rationale for Establishing AFD:** To create a farm that supports establishing endemic plant species, sustaining the Hawaiian Culture, and harvesting and distributing the crops to the local markets, for justification for the additional farm dwelling.

FINDINGS

1. 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 HRS Chapter 205-4.5 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 (SUB 7022) approved on April 23, 1999, 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) memo January 20, 2021.
 - b. Department of Health (DOH) – No comments received as of this date.

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 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, State of Hawai'i, which states that the additional dwelling shall be used for farm-related purposes.

4. The farming enterprise shall be commercial in nature and up to seventy-five percent (75%) of your proposed farm plan shall be implemented within three (3) years from the AFDA approval date. The Planning Department shall be allowed to inspect the farm upon reasonable prior notice.
5. 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 signature(s) along with a check made out to the Bureau of Conveyances in the amount of \$41.00 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.

6. 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.
7. The applicant is responsible for any State and Federal tax consequences due to the income produced from the farm activity.
8. 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.
9. DWS has noted that the subject parcel does not have a County approved water service at present, and an additional water service is not available for the additional dwelling.
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 **April 18, 2023**, may cause the Director to initiate proceedings to invalidate the AFD.
11. An initial extension of time for the performance of conditions within the permit may be granted by the Planning Director upon the following circumstances:

- A. Non-performance is the result of conditions that could not have been foreseen or are beyond the control of the applicants, successors, or assigns and that are not the result of their fault or negligence.
- B. Granting of the time extension would not be contrary to the General Plan or Zoning Code.
- C. Granting of the time extension would not be contrary to the original reasons for the granting of the permit.
- D. The time extension granted shall be for a period not to exceed the period originally granted for performance (i.e., a condition to be performed within one year may be extended for up to one additional year).

Should any of these conditions not be met or substantially complied with in a timely fashion, the Planning Director may initiate procedures to revoke this permit.

In reference to the Department of Water Supply's comment, we suggest the following:

- a. "Any existing and/or future dwellings not serviced by County water system constructed on the property shall have a minimum 6,000-gallon water storage facility for domestic consumption for water catchment. This catchment system shall 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. Provide a water supply system sufficient for firefighting consisting of a minimum 3,000 gallons of water per existing and/or proposed future dwelling on the property meeting with the approval of the Hawaii County Fire Department. If dwellings are more than 50 feet apart, 4,000 gallons of water per dwelling will be required".
12. The proposed location of the 10,000-gallon catchment tank as shown on the site plan submitted with the additional farm dwelling application needs to meet the Zoning Code minimum yard setbacks of thirty-feet front (north) yard and twenty-feet side (east) yard setbacks.

Please feel free to contact Rosalind Newlon of this office at (808) 323-4770 or email rosalind.newlon@hawaiicounty.gov should you have any further questions and/or concerns.

Sincerely,



ZENDO KERN
Planning Director

Keith Winnie
Keith Winnie Architecture Inc.
April 19, 2021
Page 6

RJN:rjn
C:\Users\rnewlon\Desktop\Newlon\AFDA Approval\AFDAap-7-7-004-079 Winnie.doc

Enclosures: AFDA document
AFDA document instruction sheet
Exhibit A

cc: Chief Sanitarian, State of Haw. Dept. of Health
Manager-Chief Engineer, Haw. County Dept. of Water Supply
Lisa Miura, Administrator, Haw. County Real Property Tax Division
Lisa.Miura@hawaiicounty.gov

Richard S. Prodan
6600 Niwot Road
Longmont, CO 80503-8741

cc via email: GIS Section w/enclosures



DEPARTMENT OF WATER SUPPLY • COUNTY OF HAWAII

345 KEKŪANAŌ'A STREET, SUITE 20 • HILO, HAWAII 96720

TELEPHONE (808) 961-8050 • FAX (808) 961-8657

January 20, 2021

TO: Mr. Zendo Kern, Director
Planning Department

FROM: Keith K. Okamoto, Manager-Chief Engineer

SUBJECT: **Additional Farm Dwelling Agreement Application
(FDA-21-000487)
Applicant – Keith A. Winnie Architects Inc.
Tax Map Key 7-7-004:079**

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

An existing 5/8-inch meter services this property and is adequate for only one (1) dwelling unit at an average of 400 gallons per day. Inasmuch as this application is proposing an additional dwelling, the installation of a separate 5/8-inch meter would normally be required in accordance with the Department's regulations. However, the Department's existing water system facilities cannot support an additional water meter at this time. Extensive improvements and additions, which may include, but not be limited to, source, storage, booster pumps, transmission, and distribution facilities, would be required. Currently, sufficient funding is not available from the Department for such improvements and no time schedule is set.

Therefore, the Department has no objections to the proposed application, subject to the applicant understanding and accepting that the Department cannot provide service to the proposed additional farm dwelling. Should the application be approved, all dwellings shall not share the existing meter, and the water system plumbing between any dwellings shall not be interconnected in any way.

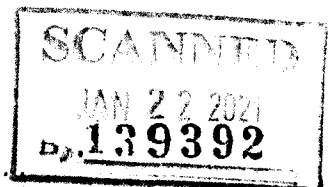
Should there be any questions, please contact Mr. Troy Samura of our Water Resources and Planning Branch at 961-8070, extension 255.

Sincerely yours,

Keith K. Okamoto, P.E.
Manager-Chief Engineer

TS:dfg

copy – Keith A. Winnie Architects Inc.
DWS Customer Service Sections (Hilo and Kona)



... *Water, Our Most Precious Resource* ... *Ka Wai A Kāne* ...

The Department of Water Supply is an Equal Opportunity provider and employer.

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 5). Photocopies of this page may be made and sent to any persons listed on the page 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.

Please have your notary print their name underneath their signature line.

2. Enclose a check or money order in the amount of \$41.00, made out to the Bureau of Conveyance, for the Bureau of Conveyance 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, Hawai'i 96720

TITLE OF DOCUMENT:

ADDITIONAL FARM DWELLING AGREEMENT (FDA-21-000487)

PARTIES TO DOCUMENT:

FIRST PARTY: RICHARD S. PRODAN

SECOND PARTY: COUNTY OF HAWAII

PROPERTY DESCRIPTION:

Portion of Holualoa 3rd – Kaunalumalu Beach
Sec., North Kona, Hawai'i Island, Hawaii

TMK: (3) 7-7-004:079

ADDITIONAL FARM DWELLING AGREEMENT

THIS AGREEMENT made and executed this ___ day of _____, 2021, by and between RICHARD S. PRODAN, herein called the "First Party," whose mailing address is 6600 NIWOT ROAD, LONGMONT, CO 80503-8741; and, the **COUNTY OF HAWAI'I**, herein called the "Second Party."

IT IS HEREBY AGREED that the First Party may construct one additional farm dwelling (note: the additional farm dwelling of this agreement is the approved second additional farm dwelling; and, in chronological and numerical order, the second additional farm dwelling is also the second single-family dwelling) located on the real property of Lot 15. The property Lot 15 is described as a Portion of Holualoa 3rd-Kaunalumalu-Beach Sec., North Kona, Island of Hawai'i, Hawai'i containing 5.026 acres, **Tax Map Key (3) 7-7-004:079**, situated in the 1State Land Use Agricultural district and zoned Agricultural (A-5a) by the Second Party.

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

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 this agreement shall run with the land and apply to a lessee or tenant of the lot or of any portion of Lot 15.

IT IS HEREBY FURTHER AGREED that should the pertinent provisions of the State and County laws, 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, for the property, Lot 15, situated within the State Land Use Agricultural district, any land use and zoning violations that is determined by the Second Party to be caused by the First Party, a LESSEE or a TENANT, the Second Party may impose fines in violation of Hawaii Revised Statutes section 205-4.5. 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 a first violation; for any additional violation, there shall be a fine of not more than \$5,000. The Second Party may also impose fines for any violation of Hawaii County Code Chapter 25, as amended, according to the procedures and fine schedule of Hawaii County Code – Zoning Code sections 25-2-30 through -2-36.

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

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

FIRST PARTY:

RICHARD S. PRODAN, Landowner

SECOND PARTY:

ZENDO KERN, Planning Director
County of Hawai'i Planning Department

STATE OF HAWAII

)

COUNTY OF HAWAII

) SS.

)

On this _____ day of _____, 2021 before me personally appeared RICHARD S. PRODAN, to me known to be the person described herein and who executed the foregoing instrument and acknowledged that he executed the same as his free act and deed.

Notary Public, State of Hawaii

My commission expires: _____

STATE OF HAWAII)
) SS.
COUNTY OF HAWAII)

On this ____ day of _____, 20__, before me personally appeared Zendo Kern to me personally known, who, being by me duly sworn, did say that he is the Planning Director of the County of Hawai'i, and that the Planning Department of the County of Hawai'i has no corporate seal; and that the instrument was signed on behalf of the Planning Department of the County of Hawai'i, a government agency, and said Zendo Kern acknowledged the instrument to be the free act and deed of said Planning Department, County of Hawai'i.

Rachelle Ley

Notary Public, State of Hawai'i
Third Judicial Circuit

My Commission Expires: June 12, 2023

Document Date:	_____	No. of Pages:	_____
Notary Name:	Rachelle Ley	3rd Judicial Circuit	
Doc. Description:	_____ _____ _____		
Notary Signature	Date		