

Background Information #4 and #5, above, states that the subject parcel is in the State Land Use Agricultural District and its County Zoning classification is in A-1a (Agricultural, 1-acre minimum lot size) and is therefore designated for agricultural land use as defined by the State Land Use law and the County Zoning classification.

6. **One Existing Farm Dwelling.** Real Property Tax Division records and the landowner-applicant's application information with submitted Farm Site Plan, confirms one farm dwelling exists on the subject parcel. This "First Farm Dwelling" was constructed by permit in 1994, and Real Property Tax Division records confirm that the first dwelling was permitted in 1994 (Building Permit #B940366).
7. **Proposed Request: Additional Farm Dwelling (Second Farm Dwelling).** Agricultural State Land Use and County Zoning allows the landowner to apply for an Additional Farm Dwelling (AFD) on this property, pursuant to HRS, section 205-4.5 (a)(4) or (b) and Hawai'i County Zoning Code, section 25-5-77 (b) or (c), and Hawai'i County Planning Department Rule 13-4 (c).
8. **Commercial Agricultural 'Pursuit': Existing Farming Operation.** To substantiate the development of commercial agriculture on the subject parcel, the landowner-applicants have submitted documentation to satisfy the statutory standards of the two state laws germane to evaluating this application:
 - a) HRS, section 204-4.5 (a)(4) for a 'farm dwelling,' states, in part, "*... a single-family dwelling located on and used in connection with a farm, ..., or where agricultural activity provides income to the family occupying the [farm] dwelling, ...*"; and
 - b) HRS, section 165-2 defines "farming operation" to mean "*... a commercial agricultural ... [or whatever type of agriculture is undertaken] facility or pursuit conducted, in whole or in part, ...*".
9. **Official County Agricultural Assessment.** According to Real Property Tax records, the property is **not** currently (2020) assessed for any agricultural use on the property. The property class is homeowner.
10. **Located On & Used in Connection with a Farm, HRS, Section 205-4.5 (a)(4).** Although the County Real Property Tax agricultural assessment does not provide verification of agricultural usage, the expenses for the existing farm substantiates consistency with one of the two statutory criteria recited in HRS, section 205-4.5 (a)(4): That the proposed Additional Farm Dwelling will be located on, and used in connection with, an existing farming operation.
11. **Farm Site Plan of an Existing Farm Operation.** The landowner-applicant's agricultural use as shown on the submitted farm plan is consistent with the above-discussed the landowner-applicant's documentation of investment expenditures for a commercial farm (discussed below).

Essentially, the landowner-applicants have an existing farm with a variety of vegetables grown within a greenhouse, and fruit trees planted in the ground on the subject parcel; therefore, the requested proposed Additional Farm Dwelling will comply with HRS, section 205-4.5 (a)(4) and the statutory criteria that specifies the AFD to be located on, and used in connection with, a farm.

Farming Operation means a commercial agricultural facility or pursuit, conducted in whole or in part, according to HRS, section 165-2. The landowner-applicant's farm satisfies the definition standards of HRS, section 165-2 for a commercial agricultural pursuit conducted in whole or in part.

In general, based on the submitted tax records, the landowner-applicants state they have spent \$5,639 to pursue their farm operation for commercial agriculture. This substantiates the landowner-applicant's 'pursuit' to conduct a "farming operation" for agricultural income. The existing greenhouse is being used for vegetables and the existing fruit trees are in production, as generally depicted on the submitted Farm Plan.

FINDINGS

1. **Farm Dwellings & Additional Farm Dwellings.** According to HRS, section 205-4.5(a)(4), a farm dwelling means a single-family dwelling located on and used in connection with a farm or where agricultural activity provides income to the family occupying the dwelling. The farm dwelling definitions of Hawai'i County Code, sections 25-5-77(b) and 25-1-5(b), and Planning Department Rule 13-3 (b) are consistent with the State law definition. Therefore, dwellings within the State Land Use Agricultural District are defined as a farm dwelling or additional farm dwelling.
2. **Approval of the Additional Farm Dwelling.** Background Information #4 and #5, confirmed that this property is located and classified in the State Land Use Agricultural and the County Agricultural Zoning districts.

Approval of the Additional Farm Dwelling Application (AFDA): The first dwelling, permitted in 1994, permits the dwelling to function as the first farm dwelling on the parcel. Furthermore, approval of the farm dwelling requires that it comply with and fulfill the above-discussed farm dwelling standards. The status of an Additional Farm Dwelling was discussed above in Background Information #7.

3. **Working Farm and Commercial Agriculture.** The documentation of investment costs to pursue and realize the commercial farm operation for the production and harvest of vegetable and fruits, the submitted farm plan, the documentation of investment costs and expenditures needed for the farm, and the agreement to use the proposed dwelling for farm-related agricultural activity document and substantiate that the applicant's proposal and efforts are consistent with HRS, Chapter 205, the state law that requires a 'working farm or a farming operation,' as defined in HRS, section 165-2, the Hawai'i Right to Farm Act.

HRS, section 165-2 defines a working farm or farming operation to mean "... a commercial agricultural facility or pursuit conducted in whole or in part ...; the planting, cultivating, harvesting, and processing of crops; ...". Additionally, HRS, section 205-4.5(a)(4) requires the agricultural activity to provide income to the family occupying the farm dwelling, discussed above at Findings #1.

The state and county laws do not define the terms commercial agriculture, farm, or pursuit; however, the available general definition for commercial farming or commercial agriculture means a producer-farmer is farming with the intent to sell some or all of their agricultural production. In commercial farming, the agricultural harvest (in whatever form that takes) is for a commercial purpose: that means, the agricultural harvest is produced with the purpose to sell it in the marketplace.

In the context of the definition of farming operation or working farm, the term pursuit is administratively interpreted to include efforts, investment costs, and expenditures for an agricultural purpose that pursue or are in pursuit to establish or maintain a commercial farm.

Therefore, the proposed farming enterprise is required to be a commercial working farm or farming operation, as stated in HRS, Chapters 205 and 165, the state laws that preempt this issue. As discussed above, we find the landowner-applicant's proposal satisfies the basic criteria of a commercial agricultural pursuit, operating a farm to produce and harvest their vegetables and fruits.

- 4 **Approved Water Source System and Wastewater System.** County of Hawai'i Zoning Code, section 25-4-2 (a) (1) and (2), regulate 'Conditions for Construction of Buildings Designed for Human Occupancy,' and includes additional farm dwellings.

The first standard requires an approved water system to provide water to the subject building site and, the water service can be delivered from the county water system or from a private or individual delivery system.

The second standard requires a residential wastewater system approved by the State of Hawai'i Department of Health. Furthermore, please note that these two improvements for the additional farm dwelling requires compliance with the construction standards of the County building permit application process.

DECISION AND CONDITIONS

Your request to construct one (1) Additional Farm Dwelling is **approved**. The Additional Farm Dwelling is subject to the following conditions:

1. Your AFDA (or agreement) has been approved based on the existing commercial agricultural activity or pursuit as summarized in this letter and represented on the submitted Farm Plan Summary and the other above-discussed application or supplement materials.

2. Qualified Right to Inspect. As identified in the Additional Farm Dwelling Agreement, the First Party, shall allow the Second Party, the Hawai'i County Planning Department, or its representative, to inspect the farm operation upon reasonable prior notice and at a mutually agreeable date and time.
3. Requirement of Commercial Agriculture & Working Farm or Farm Operation. The farming operation shall be commercial in nature and the Additional Farm Dwelling shall be used for commercial 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.
4. AFDA Runs with the Land. 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.
5. An Additional Farm Dwelling Agreement affidavit shall be notarized and submitted to the Planning Department for recordation with the State of Hawai'i, Bureau of Conveyances, which states that the additional dwelling shall be used for farm-related purposes. **The enclosed AFDA shall 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 (Regular System), 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 to the State of Hawai'i by the Planning Department.

6. Compliance is required with all other applicable rules, regulations, and requirements of HRS, Chapters 205 and 165, the County Planning Department (including, but not limited to the County of Hawai'i Code Chapter 25, Zoning), Department of Public Works, Department of Water Supply, Fire Department, the State of Hawai'i Department of Health, and any other reviewing agencies/divisions listed on the county Building Permit application.
7. For the construction of the proposed Additional Farm Dwelling, the applicant shall comply with all standards, specifications, conditions, and requirements of the county building permit application process, of the County Department of Water Supply, the Hawai'i State Department of Health, and the conditions for construction of buildings designed for human occupancy of Hawai'i County Code Zoning, section 25-4-2 (a) (1) and (2).
8. Two Year Time Period to obtain a County Building Permit. The decision to approve the Additional Farm Dwelling shall be valid for a period of two (2) years from the date of this approval letter. Therefore, there is a two-year period to secure a Building Permit (BP) for the AFD. Failure to secure a BP to construct the AFD on or before the two-year period

Mr. Roy Y. Ogawa
October 8, 2021
Page 6

expires, may be cause for the Planning Director to initiate a process to rescind and invalidate the AFD approval.

Should any further questions or concerns arise, please feel free to contact the Planning department at planning@hawaiicounty.gov.

Sincerely,

Zendo Kern

Zendo Kern (Oct 15, 2021 12:21 HST)

ZENDO KERN
Planning Director

HS:cn

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Enclosures: AFDA document
AFDA document instruction sheet

cc w/Encl.: Chief Sanitarian, DOH
Manager-Chief Engineer, DWS

cc (via email): GIS Section (letter w/enclosures)
Lisa Miura, Administrator, Real Property Tax Office (letter only)