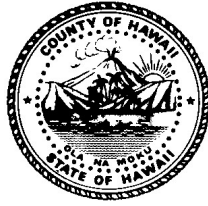


Mitchell D. Roth
Mayor

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

November 3, 2022

Mr. Barry M. Smith, TTEE
Mrs. Julia P. Smith, TTEE
27-570 'Ōnohi Loop
Pāpa'ikou, Hawai'i 96781

**SUBJECT: Application: ADDITIONAL FARM DWELLING AGREEMENT
(PL-AFD-2022-000036)**
Applicant(s): Barry M. Smith, TTEE & Julia P. Smith, TTEE
Landowner(s): Barry and Julia Smith Family Trust
Location: Kawainui to Mokuoni'ki, South Hilo, Hawai'i
Tax Map Key: (3) 2-7-039:024 Lot 28

Pursuant to state law, Hawai'i Revised Statutes (HRS) section (sec.) 205-4.5 (a)(4), Hawai'i County Code sec. 25-5-77(c) Additional Farm Dwellings, and County of Hawai'i Planning Department Rule 13-4 - Farm Dwellings, a Planning Director's review has been completed on your request for **one (1) Additional Farm Dwelling**. The application request is **approved** subject to the following background information, findings, and conditions of approval.

BACKGROUND INFORMATION

1. **Subject Property:** TMK: (3) 2-7-039:024, Lot 28, Subdivision No. (SUB-13-001304) (June 5, 2014) 27-570 'Ōnohi Loop, Pāpa'ikou, Hawai'i 96781
2. **Lot Size:** 214.3050 acre(s) or, 9,335,126 square feet
3. **County Zoning:** A-20a (Agricultural District, minimum building site of 20 acres).
4. **State Land Use:** Agricultural (A)

The subject parcel is in the State Land Use Agricultural District and its County Zoning classification is in Agricultural - 20 acres (A-20a) and is therefore, designated for agricultural land use as defined by the State Land Use law and the County Zoning classification.

FINDINGS

1. **Building Permits:** Real Property Tax records and the information submitted with the applicant's Farm Site Plan confirms one farm dwelling exists on the subject parcel. Building Division records indicate that this "First Farm Dwelling" was constructed by permit in 2005, Building Permit # B2004-0763H. Records show that a barn was built in 2005, (BP) B2005-0763H.
2. **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 sec. 205-4.5 (a)(4) or (b) and Hawai'i County Zoning Code sec. 25-5-77 (b) or (c), and Hawai'i County Planning Department Rule 13-4 (c).
3. **Proposed Agricultural Activity:** The subject property currently has approximately 150 Kava plants, 200 lychee plants, sweet potato and cattle. The applicant leases portions of the parcel to root crop farmers and cattle ranchers. They have repurposed a horse barn and cattle corrals, for the use of a nursery to clone and pot more kava plants. The applicant plans to plant at least 4,000 more kava in the first year, 1,000 the second year, 2,000 the third year and 1,000 the fourth year. They will end leasing portions of the property to the crop farmers for the expansion of kava planting. A processing agricultural structure will be proposed for permitting in the second year of farming operations.
4. **Evidence of Agricultural Activity**
 - a) Real Property Tax Division: Real Property Tax Clearance dated August 25, 2022, paid up to December 31, 2022.
 - b) Income Tax Records: Evidence of a State of Hawai'i Department of Taxation dated May 5, 2022 for Pu'iwa Hawaiian Farms LLC. G.E. Excise tax license GE-173-031-5776-01.
 - c) Invoices of income for the sale of Kaimana Lychee and expense receipts for farm equipment, fencing and 24' x 48' Green House.
5. **Satisfaction of Statutory Standards:** 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, ...*" [emphasis added]; 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, ...*" [emphasis added].

Mr. Barry Smith, TTEE
Mrs. Julia Smith, TTEE
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6. **Rationale for Establishing AFD:** During the first year of farming the applicant initiated a cloning and potting process for kava planting. After cloning and potting, they begun prepping the fields to plant 30 kava trees and currently have 150 kava plants in the ground. They plan on planting a total of 4000 plus trees by the end of the 3rd year. In addition, the owners have planted 200 lychee plants and sell their harvested products to various local markets. Improvements have been made on the farm to accommodate large equipment used for maintenance and harvesting. The owners have a goal to plant at least 175 acres of Kava and plan on building a permitted processing structure for harvesting and selling.

AGENCY COMMENTS

1. **Real Property Tax (RPT):** No comments received.
2. **Department of Water Supply (DWS):** See DWS comment letter dated 10/11/2022. (attached) (**Exhibit A**)

The subject parcel does not have an existing water service with the Department, as the parcel is not within the service limits of the Department's existing water system. 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.

3. **State of Hawai'i Department of Health (DOH):** See DOH comment letter dated 9/21/2022. (attached) (**Exhibit B**)

The Department of Health (DOH) sent a memorandum stating that they found no environmental health concerns with regulatory implications in the submittals.

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 expanded 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.

Mr. Barry Smith, TTEE
Mrs. Julia Smith, TTEE
Barry and Julia Smith Family Trust
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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. 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 representatives to inspect the farm upon reasonable prior notice.
8. DWS has noted that the subject parcel does not have an existing water service with the Department, as the parcel is not within the limits of the Department's existing water system.
9. 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 **November 3, 2024**, may cause the Director to initiate proceedings to invalidate the AFD.
10. 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.

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Mrs. Julia Smith, TTEE
Barry and Julia Smith Family Trust
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- 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.

Please feel free to contact Terri L. Napeahi of this office, (808) 961-8160, or via email terri.napeahi@hawaiicounty.gov, should you have any questions and/or concerns.

Sincerely

Zendo Kern

Zendo Kern (Nov 14, 2022 08:05 HST)

ZENDO KERN
Planning Director

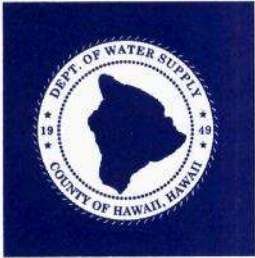
TLN:cn

\\coh01\planning\public\Admin Permits Division\AFDA\2022\PL-AFD-2022-000036 AFDA Approval Smith, TTEE.doc

Enclosures: DOH Comment Letter dated September 21, 2022
DWS Comment Letter October 11, 2022
AFDA Agreement
AFDA Instruction sheet

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

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



DEPARTMENT OF WATER SUPPLY • COUNTY OF HAWAII

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

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

October 11, 2022

CDH PLANNING DEPT
OCT 12 2022 PM 2:07
REC'D HAND DELIVERED

TO: Mr. Zendo Kern, Director
Planning Department

FROM: Keith K. Okamoto, Manager-Chief Engineer

SUBJECT: **Additional Farm Dwelling Agreement (PL-AFD-2022-000036)**
Applicant – Barry and Julia Smith Family Trust
Tax Map Key 2-7-039:024

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

The subject parcel does not have an existing water service with the Department, as the parcel is not within the service limits of the Department's existing water system.

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 there be any questions, please contact Mr. Troy Samura of our Water Resources and Planning Branch at (808) 961-8070, extension 255.

Sincerely yours,

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

TS:dfg

copy – Barry and Julia Smith Family Trust

EXHIBIT A

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

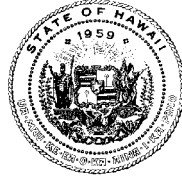
The Department of Water Supply is an Equal Opportunity provider and employer.

Mori, Ashley

From: Honda, Eric T. <Eric.Honda@doh.hawaii.gov>
Sent: Wednesday, September 21, 2022 1:41 PM
To: Planning Internet Mail
Subject: PL-AFD-2022-000039
Attachments: PL-AFD-2022-000036 TMK2-7-039--024.doc

Eric Honda
District Environmental Health Program Chief
Hawaii District Health Office
(808) 933-0917
Eric.honda@doh.hawaii.gov

EXHIBIT B



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

MEMORANDUM

DATE: September 21, 2022

TO: Mr. Zendo Kern
Planning Director, County of Hawaii

FROM: Eric Honda
District Environmental Health Program Chief

SUBJECT: Application: ADDITIONAL FARM DWELLING APPLICATION
PL-AFD-2022-000036
Applicant: Barry M. Smith, TTEE
Request: One (1) Additional Farm Dwelling Unit
TMK: 2-7-039:024

The Health Department found no environmental health concerns with regulatory implications in the submittals.

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.

2. The date on page 2 will be filled in when the agreement is signed by the Planning Director; please leave it blank.
3. Enclose a check or money order in the amount of **\$41.00**, made payable to the Bureau of Conveyances, for the recordation fee. (One payment needed. Please designate who will submit)
4. 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 (PL-AFD-2022-000036)

PARTIES TO DOCUMENT:

**FIRST PARTY: BARRY M. SMITH
 JULIA P. SMITH**

SECOND PARTY: COUNTY OF HAWAI'I

PROPERTY DESCRIPTION:

LOT 28, KAWAINUI TO MOKUONIKI, S.
HILO, HAWAI'I, Hawai'i Island

TMK: (3) 2-7-039:024

ADDITIONAL FARM DWELLING AGREEMENT

THIS AGREEMENT made and executed this ___ day of _____, 2022, by and between **BARRY M. SMITH** and **JULIA P. SMITH**, herein called the "First Party," whose mailing address is 27-570 'Ōnohi Loop, Pāpa'ikou, Hawai'i 96781 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 28. The property LOT 28 is described as a portion of KAWAINUI TO MOKUONIKI, S. HILO, HAWAI'I, Island of Hawai'i, containing 214.3050 ACRES or 9,335,126 SQUARE FEET, **Tax Map Key (3) 2-7-039:024**, situated in the State Land Use AGRICULTURAL District and zoned A-20a 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 28.

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 28 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 Hawai'i 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 Hawai'i County Code Chapter 25, as amended, according to the procedures and fine schedule of Hawai'i 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:

BARRY M. SMITH, Landowner

JULIA P. SMITH, Landowner

SECOND PARTY:

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

STATE OF HAWAI'I)
) SS.
COUNTY OF HAWAI'I)

On this _____ day of _____, 2022 before me personally appeared BARRY M. SMITH and JULIA P. SMITH, 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 Hawai'i

My commission expires: _____