

Harry Kim
Mayor



Michael Yee
Director

Daryn Arai
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

July 23, 2018

Jill & Scott Henderson
65-1186 Spencer Rd
Kamuela, HI 96743-8483

Dear Mr. & Mrs Henderson:

Ohana Dwelling Permit Application (OHD-18-000185)
Applicant: Jill & Scott Henderson
Owner: HENDERSON FAMILY TRUST
State Land Use: Urban
County Zoning: Agricultural (A-1a)
Land Area: 2.58 acres
TMK: (3) 6-5-011:009

Upon review of your application and as applicable, comments from the public and government agencies for an Ohana Dwelling Unit Permit (OHD), you are hereby **granted** approval to construct a detached OHD subject to conditions set forth below in this letter.

REQUEST

The applicant is requesting an OHD Permit to construct an additional dwelling unit on the subject property.

PROPERTY DESCRIPTION

The subject TMK parcel, comprised of 1.58 acres, Lot 4 situated within the Waimea Homesteads, South Kohala, Island of Hawai'i. The property is zoned Agricultural (A-1a) by the County and is situated within the State Land Use Urban district.

AGENCY COMMENTS

The subject Application for an OHD Permit was reviewed by the required agencies and their respective comments are as follows:

1. The Hawaii County Department of Public Works (DPW): See attached memorandum dated July 23, 2018 (**Exhibit A**);
2. The Department of Water Supply (DWS): See attached memorandum dated June 13, 2018 (**Exhibit B**);
3. The Hawai'i County Fire Department (HFD): The HFD did not comment on this application as of this date;
4. The State of Hawai'i Department of Health (DOH): See attached memorandum dated June 8, 2018 (**Exhibit C**).

COMMUNITY COMMENTS

Notice were sent to surrounding property owners on May 12, 2018. Comments were received from Mahilani E.K. Hiatt, see attached letter dated June 19, 2018 (**Exhibit D**).

ADDITIONAL FINDINGS

We note the following documents that accompanied your application:

The original and notarized affidavits of **Jill Elaine Henderson, trustee of the Henderson Family Trust**, dated July 15, 2018, included with the OHD application states:

- 1) *I, Jill Elaine Henderson, am a trustee of the Henderson Family Trust that holds title of the property residing at 65-1186 Spencer Rd. Kamuela, HI 96743. Tax Map key (3) 6-5-011:009. I attest that provisions of any restrictions, covenant or other land use restrictions applicable to the lot by way of deed or lease or other provisions do not prohibit the construction or placement of an Ohana dwelling unit or second unit.*
- 2) *I, Jill Elaine Henderson, am a trustee of the Henderson Family Trust that holds title of the property residing at 65-1186 Spencer Rd. Kamuela, HI 96743. Tax Map key (3) 6-5-011:009.*

ANALYSIS

The proposed building site for the subject OHD application is a legal lot of record greater than 10,000 square feet located within the Agricultural district and is designated Urban by the State Land Use Commission. Additional dwellings are not normally permitted on this lot, and there is no guest house located on the property. There are no pending subdivision actions affecting the subject TMK property, nor has any variance, Planned Unit Development, Cluster Plan Development, or other preemption from requirements of the Hawai'i County Code been granted. There has not been a previously approved variance from the Subdivision Code (Chapter 23) and the Zoning Code (Chapter 25) on the property, nor are there any conditions within a change of zone ordinance that would prohibit an OHD. The applicant has not submitted any OHD applications in the previous two years. Therefore, the application meets the requirements for an OHD Permit.

The Department of Water Supply has stated in its memorandum dated June 13, 2018, *" that the subject parcel is currently served by a 5/8 inch meter (Account No. 800-027400) which is adequate for only one (1) dwelling at an average daily usage of 400 gallons. Inasmuch as this application is proposing an additional dwelling, the installation of a separate 5/8-inch meter will be required. Water can be made available from the Department's existing 6-inch waterline within Spencer Road, fronting the subject parcel."*

The Department of Public Works has stated in its memorandum dated July 23, 2018, *" Based upon photographs provided to the Department of Public Works (DPW), Engineering Division, by Mahilani E.K. Hiatt, there is evidence of existing runoff which runs through the subject property and flows toward adjacent properties, including the County Owned and maintained Spencer Road. The Engineering Division is concerned that the project may increase runoff. All project generated runoff shall be disposed of on-site and shall not be directed toward any adjacent properties."*

DECISION AND CONDITIONS

In view of the above, by this letter, you are hereby **granted** permission to construct a detached single-family OHD subject to the following conditions:

- 1) The proposed OHD shall comply with Ordinance No. 96-47 and Rule 12, the County of Hawai'i Planning Department's Rules of Practice and Procedure relating to OHD's.
- 2) **Non-transferability:** The permit for the OHD shall be personal to the applicant until construction of the OHD has been completed. The permit shall not be transferable or assignable to any other person prior to completion of its construction to the satisfaction of the Chief Engineer, DPW.
- 3) **Prohibition of Advertising, Sales, Transfers:** No person shall advertise or represent to the public that a permit to construct an OHD is transferable with the sale of the property on which the permit has been granted.
- 4) **Building Permit:** The applicant is required to secure a building permit from the Department of Public Works, Building Division, within one (1) year from the date of this approval for the construction of the OHD on or before July 23, 2019.

Please bring or attach a copy of this Permit to assist the reviewing agencies in understanding and expediting the review and processing of the building construction plans and building permit application for the additional building improvements necessary to establish the OHD on the subject parcel.

- a) The applicant shall consult with the DPW to conform with driveway requirements and to address potential runoff issues with the placement of the OHD.
 - b) The applicant shall contact the DWS and pay any required facilities charge and service lateral installation charges to the DWS.
 - c) The applicant shall correspond with the DOH to determine the number and type of individual wastewater systems allowed.
 - d) The applicant shall consult with the HFD to verify the accessibility of the premises for emergency/fire fighting purposes.
 - e) A one time, 30-day time extension to obtain the building permit may be granted by the Planning Director. A written request for a time extension shall be filed with the Planning Director, not less than forty-five (45) days prior to the expiration date of the OHD permit. The Planning Director shall render a decision on the request for a time extension prior to the expiration date of the permit.
 - f) The applicant shall not be able to obtain further extensions beyond the initial 30-day time extension. Further, such failure to conform to the time requirement shall not be cause to petition the Planning Director, Board of Appeals or any other governmental body for relief from the time requirement.
- 5) Requirements for Height, Site Area (Lot Size), Yard (Setback) and Off-Street Parking (Parking Spaces):
- a) Height limit: The height limit for the proposed detached OHD shall be **twenty-five (25'-0")** feet.

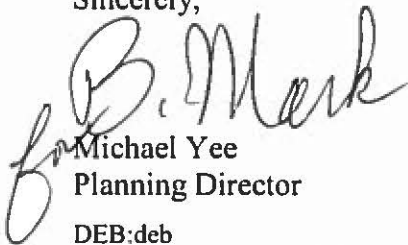
- b) Zoning and Minimum Building Site Area (Lot Size): The subject TMK parcel, containing 2.58 acres, is zoned Agricultural (A-1a) by the County and is situated within the State Land Use Urban district.
- c) Minimum Yards (Setbacks) and Open Space: The proposed dwelling unit is required to comply with the yards and open space requirements of the Hawai'i County Zoning Code, Section 25-6-35 and 25-4-7.

The respective minimum open space, front, rear, side yard and dwelling unit requirements for the proposed attached OHD to be located on the subject TMK property shall be the minimum yard requirements as follows:

- i) Front yard - minimum **thirty-five**(35) feet required;
 - ii) Rear yard – minimum **thirty-five** (35) feet required;
 - iii) Side yards – minimum **twenty-five** (25) feet required; and
 - iv) Between dwelling units – minimum **fifteen** (15) feet required.
- d) Off-Street Parking: The OHD shall be provided with a minimum of two (2) off-street parking spaces that comply with the requirements of Section 25-4-53 of the Zoning Code. All existing and additional parking spaces shall be arranged so as to be individually accessible.
- 6) A guest house shall not be permitted or constructed where an ohana dwelling has been permitted or constructed.
 - 7) This OHD permit is subject to all other applicable rules, regulations and requirements of the Planning Department, DPW, HFD, DOH and DWS and other reviewing agencies/divisions listed on the Building Permit Application.
 - 8) OHD's are prohibited on a building site that is the subject of an approved variance from the Subdivision Code (Chapter 23), the Zoning Code (Chapter 25), and property where a second dwelling unit is specifically prohibited by a change of zone ordinance.
 - a) No variance from the requirements of Chapter 23 and Chapter 25, Hawai'i County Code, as amended, shall be granted to permit the construction or placement of an OHD.
 - b) An OHD shall not be permitted on a lot which has been the subject of a previously granted variance from any provision of Chapter 23 and Chapter 25, Hawai'i County Code, as amended.

If you have any questions please call Deanne Bugado of our West Hawai'i Office at 323-4770.

Sincerely,



Michael Yee
Planning Director

DEB:deb

P:\Ohana\Kona Ohana\Approval\OHNap-6-5-11-9_Henderson

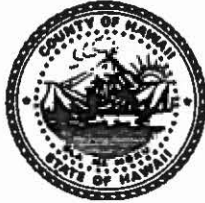
Jill & Scott Henderson
7/23/18
Page 5

Encls: Agency/Public comments - Exhibits A-D

xc: Chief Sanitarian, DOH
Manager, DWS
Chief, HFD
Chief Engineer, DPW
GIS Section (via email)

Harry Kim
Mayor

Wil Okabe
Managing Director



County of Hawai'i
DEPARTMENT OF PUBLIC WORKS
Aupuni Center
101 Pauahi Street, Suite 7 - Hilo, Hawai'i 96720-4224
(808) 961-8321 · Fax (808) 961-8630
public_works@hawaiicounty.gov

PLANNING DEPARTMENT
County of Hawaii
Merrick H. Nishimoto
74-5047 Ane Keohokalole Hwy.
Kailua-Kona, HI 96740
RECEIVED JUL 23 2018

MEMORANDUM

Date: July 23, 2018
To: Deanne Bugado, Planner V
From: Department of Public Works, Engineering Division *M*
Subject: Application for 'Ohana Dwelling
Applicant: Jill and Scott Henderson
Tax Map Key: 6-5-011:009

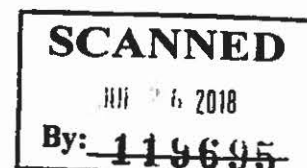
Although we have not had a chance to review the subject application, there is some concern with the additional 'Ohana Dwelling proposed on the subject property.

Based upon photographs provided to the Department of Public Works (DPW), Engineering Division, by Mahilani E.K. Hiatt, there is evidence of existing runoff which runs through the subject property and flows toward adjacent properties, including the County owned and maintained Spencer Road. The Engineering Division is concerned that the project may increase runoff. All project generated runoff shall be disposed of on-site and shall not be directed toward any adjacent properties.

Should there be any questions concerning this matter, please feel free to contact Natalie Whitworth of our Kona Engineering Division office at 323-4853.

NW

Copy: ENG-HILO/KONA





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

June 13, 2018

2018 JUN 14 PM 2 50
 PLANNING DEPARTMENT
 COUNTY OF HAWAII

TO: Mr. Michael Yee, Director
 Planning Department

FROM: Keith K. Okamoto, Manager-Chief Engineer

SUBJECT: Ohana Dwelling Unit Permit Application
 (OHD 18-000185)
 Applicant – Jill and Scott Henderson
 Tax Map 6-5-011:009

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

Please be informed that the subject parcel is currently served by a 5/8-inch meter (Account No. 800-027400) which is adequate for only one (1) dwelling at an average daily usage of 400 gallons. Inasmuch as this application is proposing an additional dwelling, the installation of a separate 5/8-inch meter will be required. Water can be made available from the Department's existing 6-inch waterline within Spencer Road, fronting the subject parcel.

Therefore, the Department has no objections to the proposed application, subject to the applicant understanding and accepting the following conditions:

1. Installation by the Department of Water Supply of a 1-inch service lateral to service a 5/8-inch meter which shall be restricted to a maximum daily-flow of 400 gallons.
2. Remittance of the following charges, which are subject to change, to our Customer Service Section:

FACILITIES CHARGE (FC):	
2 nd service to the parcel	\$5,500.00
SERVICE LATERAL INSTALLATION CHARGE:	
<u>Install one (1) meter on Spencer Road, a County road</u>	<u>4,000.00</u>
Total (Subject to Change)	\$9,500.00

118947

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

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

Mr. Michael Yee, Director
Page 2
June 13, 2018

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 – Ms. Jill and Mr. Scott Henderson
DWS Customer Service Sections (Hilo and Waimea)



2018 JUN 21 PM 1:14

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

MEMORANDUM

DATE: June 18, 2018

TO: Mr. Michael Yee
Planning Director, County of Hawaii

FROM: Eric Honda
District Environmental Health Program Chief

SUBJECT: Application: Ohana Dwelling Unit Permit Application (OHD-18-000185)
Applicant: Jill & Scott Henderson
Land Owner: HENDERSON FAMILY TRUST
Proposal: Construct an Ohana Dwelling Unit
TMK: 6-5-011:009

The applicant would need to meet the requirements of our Department of Health Air Pollution Rules, Chapter 60.1, Title 11, State of Hawaii for fugitive dust control. If there is need to discuss these requirements, please contact our Clean Air Branch staff at Ph. 322-1965.

Construction activities must comply with the provisions of Hawaii Administrative Rules, Chapter 11-46, "Community Noise Control."

1. The contractor must obtain a noise permit if the noise levels from the construction activities are expected to exceed the allowable levels of the rules.
2. Construction equipment and on-site vehicles requiring an exhaust of gas or air must be equipped with mufflers.
3. The contractor must comply with the requirements pertaining to construction activities as specified in the rules and the conditions issued with the permit.

Should there be any questions on this matter, please contact the Department of Health at 933-0917.

The existing individual wastewater system can continue to serve the existing dwelling. However, wastewater generated from any additional dwelling unit/building must meet the wastewater rules in effect at the time of building permit application.



Michael Yee
June 18, 2018
Page 2 of 2

We recommend that you review all of the Standard Comments on our website:
<http://hawaii.gov/health/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 Built Environment Working Group (BEWG) of the Hawaii State 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 redevelopments projects. We also ask you to share this list with others to increase community awareness on healthy community design.

PLANNING DEPARTMENT
COUNTY OF HAWAII

2018 JUN 22 AM 11: 34

Jerry and Mahilani Hiatt
46-3976 Pu'aono Road
Honoka'a, Hawai'i 96727

June 19, 2018

Via US Mail

Michael Yee, Planning Director
Planning Department
101 Pauahi Street, Suite #3
Hilo, Hawai'i 96720

Dian Bugado, County Planner ✓
Planning Department
74-5044 Ane Keohokalole Highway
Kailua-Kona, Hawai'i 96740

Natalie Whitworth
Hawai'i County Engineering Division
74-5044 Ane Keohokalole Highway
Kailua-Kona, Hawai'i 96740

Dane Hiromasa
State of Hawai'i Department of Health
79-1015 Haukapila Street
Kealakekua, Hawai'i 96750

Re: *Application for 'Ohana Dwelling by Jill and Scott Henderson located at 65-1186 Spencer Road, Kamuela, Hawai'i 96743; T.M.K. 3- 6-5-011-009*

Dear Mr. Yee, Ms. Bugado, Ms. Whitworth and Mr. Hiromasa,

I. INTRODUCTION

I am the President of the Na Hale Hiku Homeowners Association ("Association"), which is composed of all of the owners of the seven residential lots at 'Ehiku Place in Kamuela. These lots are located immediately below (at the South/Makai side) and border the above referenced property ("Property"). My husband Jerry and I are also owners of one of the homes in this subdivision.

The Property is owned by the Henderson family. We understand that the Hendersons are in the process of applying for the right to build an 'ohana dwelling ("Ohana") and septic system

SCANNED

JUN 22 2018

By: 119114

Michael Yee
Dian Bugado
Natalie Whitworth
Dane Hiromasa
June 19, 2018
Page 2 of 4

on their land. The Association wishes to be a good neighbor and does not oppose the Hendersons being able to build the 'Ohana and septic system (together the "Project"), so long as this is done lawfully and in such a way as not to damage the Association and its members.

The Association has unanimously determined by a vote of its member that it has three primary concerns about the Project, which we respectfully request that you require the Hendersons to satisfactorily resolve, prior to allowing the construction of the Project to proceed. Those concerns are (A) Flood Control; (B) Potential Usage; and (C) Noise Abatement. Each of these concerns are discussed in turn below.

II. DISCUSSION

A. Flood Control

There is a known and well documented history of previous drainage and flooding problems originating from the Property. The proposed location of the new 'Ohana, and the proposed septic system, are both directly in the path of this previous severe flooding. Thus, construction of the proposed Project will likely exacerbate these problems and increase the risk of future flooding--which would directly impact our neighborhood and the individual homes and lots of the members of the Association.

Thirteen pictures are enclosed here to document the scope of the previous flooding problem. These were each taken and provided by Association member Alex Woodbury. The pictures show flooding that occurred in 2004, 2014 and, most recently, on April 13, 2018. One of these pictures shows the low area at the front Southwest corner of the Property. Another picture shows that the Property is bordered by a large older lava stone wall. As shown by the picture, this wall area has repeatedly filled up with a substantial volume of water in prior rains. This accumulation of water has overflowed around the wall to the East, flooding into Association lots 001 and 002, and the Association drywell drainage infrastructure on 'Ehiku Place and then going on to flood through lots 004, 027, 031, and 021.

Since the proposed 'Ohana and septic system (as currently drawn) are both in the path of this flooding, and since both are certain to add impermeable surfaces and additional runoff to the existing inadequate drainage situation, the lots within the Association could easily be seriously affected by any future flooding events. This is of particular concern because our small seven-lot Association is obligated to repair and maintain their private roadway and its drainage infrastructure. The Association has already had to improve that since the 2004 flooding, including the addition of a third DOH permitted injection dry-well, all at considerable expense.

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Natalie Whitworth
Dane Hiromasa
June 19, 2018
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We are separately quite concerned about the potential for black water introduction into surface water flooding throughout our neighborhood during a rain event if the Henderson's septic system is flooded. Obviously, this could easily drain sewage throughout the area below the Property.

We therefore request that County Planning and County Engineering require that the Hendersons provide a thorough drainage study and a robust grading and drainage plan from a licensed civil engineer. We further request that we be allowed to review these plans and that these plans be approved by us before the Hendersons are allowed to proceed. We suggest that the plans must be adequate to prevent any future flooding--before any construction is permitted.

We also request that the State Department of Health review the proposed location of, and the plans for, the septic system to insure that all affected neighbors are not at risk for black water contamination during a future rain or flooding event.

B. Potential Usage

We understand that the usage of the 'Ohana is for the Hendersons' mother to live there. We understand that Agricultural zoning does allow for a family member to live in an 'ohana unit, if it otherwise qualifies. We would request that the commitment that the occupant will be the mother (rather than a tenant, or some other use) is confirmed in writing before the permit is granted and that this be a condition of the permit. However, we also understand that the statute and county zoning requirements are that accessory agricultural dwellings are to be used for housing agricultural workers who are employed on working farms and ranches with active business licenses, and profitable crop or livestock production. This situation does not appear to meet these tests, as there is no actual agricultural operation of which we are aware on the Property.

We ask that the 'Ohana only be permitted if it meets the applicable legal requirements.

C. Noise Abatement

As the 'Ohana is close to the property line, if it is approved, we ask that the Hendersons plant an adequate number of additional Bamboo plants to screen the noise from that dwelling from the surrounding residences.

Michael Yee
Dian Bugado
Natalie Whitworth
Dane Hiromasa
June 19, 2018
Page 4 of 4

IV. Conclusion

We thank you for taking the time to review our concerns. We ask that you please let me know how you intend to proceed as the issues discussed herein and that you also please keep us abreast of your decisions. We would be happy to review any plans and provide any further information that you may request.

Sincerely,



Mahilani E.K. Hiatt
President, Na Hale Hiku Association

Enclosures

xc w/encls: Hendersons

