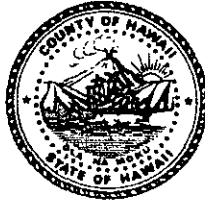


William P. Kenoi  
Mayor



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

February 11, 2014

Tammy R. Moser  
Michael R. Moser  
PO Box 3923  
Palmer, AK 99645

Dear Mr. and Ms. Moser:

**SUBJECT: Application: Additional Farm Dwelling Agreement (FDA-13-000347)**  
**Applicant: TAMMY R. MOSER and MICHAEL R. MOSER**  
**Land Owner: SERENDIPITY FARMS LLC.**  
**State Land Use: Agricultural**  
**County Zoning: A-3a (Agricultural, Minimum Building Site of 3 Acres)**  
**Land Area: 17.094 Acres**  
**Tax Map Key: (3) 1-2-007:013, Kikala-Keokea, Hmstds., Puna, Hawaii**

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:** Kikala - Keokea Homesteads, Puna, Hawai'i.
- 2. Lot Size:** 17.094 acres.
- 3. State Land Use:** Agricultural.
- 4. County Zoning:** A-3a (Agricultural, minimum building site of three acres).
- 5. Proposed Request:** One Additional Farm Dwelling.

6. **Farm Plan includes the following existing and proposed income-producing agricultural activities:**
  - a. Maintenance and harvest of 100 plus varieties of Mangoes;
  - b. Maintenance and harvest of 30 varieties of Avocados;
  - c. Maintenance and harvest of 25 varieties of Bananas;
  - d. Approximately 12 Acres of orchard used to create budwood, seedlings, and other plant material for a commercial rare tropical nursery.
7. In addition, you have provided a revenue projection for the next 10 years and your 2012 tax information to support your existing farm business plan.
8. **Estimated Time Required:** The farm activity will require a minimum of twelve and a half (12.5) hours per week.
9. **Rationale for Establishing AFD:** To accommodate both full-time and part-time farm workers in order to boost success of farm.

### **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 after 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. (*See attached copy of DWS memo dated January 15, 2014.*)

- b. Department of Health (DOH) has provided comments regarding soil quality of former sugarcane lands. *(See attached copy of DOH memo dated January 9, 2014.)*

### **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 states that the additional dwelling shall be used for farm-related purposes.
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 must 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. 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.
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.

Michael R. Moser  
Tammy R. Moser  
Page 4  
February 11, 2014

8. DWS has determined that a County approved water system can be made available to support the AFD.
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 February 14, 2016 may cause the Director to initiate proceedings to invalidate the AFD.

Please feel free to contact Jonathan Holmes of this office at (808) 961-8288 or [iholmes@hawaiicounty.gov](mailto:iholmes@hawaiicounty.gov) should you have any further questions and/or concerns.

Sincerely,



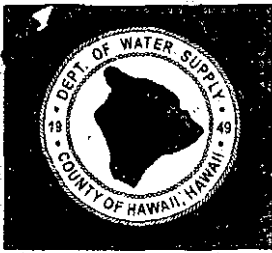
DUANE KANUHA  
Planning Director

JRH/AK:nci

P:\Admin Permits Division\AFDA\2013\12007013 Moser FDA-13-000347\Apvl\Moser12007013Aprvl.doc

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

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



**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 15, 2014

2014 JAN 16 AM 9:45  
PLANNING DEPARTMENT  
COUNTY OF HAWAII

**TO:** Duane Kanuha, Director  
Planning Department

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

**SUBJECT:** **ADDITIONAL FARM DWELLING AGREEMENT (FD# 13-000347)**  
**APPLICANT – TAMMY MOSER AND MICHAEL MOSER**  
**TAX MAP KEY 1-2-007:013**

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

The subject parcel has an existing 5/8-inch service which is suitable for only one dwelling at an average day usage of up to 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 8-inch pipeline in the State Highway 130 (Pāhoa-Kalapana Road), fronting the subject property.

Therefore, the Department can support 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 an average 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<sup>nd</sup> Service to the parcel \$5,500.00

**SERVICE LATERAL INSTALLATION CHARGE:**

Install one meter on State Highway 130 (same side of road) \$12,000.00  
Total (Subject to Change) \$17,500.00

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 on all DWS water meters. The applicant shall have a backflow prevention assembly installed on the new service per DWS standards; and, if one is not already installed on the existing service, then one

Duane Kanuha, Director


Page 2

January 15, 2014

shall be installed on the existing service as well. The installation of the backflow prevention assembly(s) must be inspected and approved by the Department before water service can be activated.

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

Sincerely yours,

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

LB:dfg



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

MEMORANDUM

DATE: January 9, 2014

TO: Duane Kahuna  
Planning Director, County of Hawaii

FROM: Newton Inouye *NI*  
District Environmental Health Program Chief

SUBJECT: Application: Additional Farm Dwelling Agreement (FDA-13-000347)  
Applicant: TAMMY R. MOSER AND MICHAEL R. MOSER  
Land Owner: SERENDIPITY FARMS LLC.  
State Land Use: Agricultural  
County Zoning: A-3a (Agricultural, Minimum Building Site of Three Acres)  
Land Area: 17.094 Acres  
Tax Map Key: (3) 1-2-007:013, Kikala – Keokea Hmstds.,  
Puna, Hawai'i

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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.

## **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.



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AFTER RECORDATION, RETURN BY MAIL TO:

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

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TITLE OF DOCUMENT:

**ADDITIONAL FARM DWELLING AGREEMENT (FDA-13-000340)**

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PARTIES TO DOCUMENT:

**FIRST PARTY: SERENDIPITY FARMS LLC.**

**SECOND PARTY: COUNTY OF HAWAI'I**

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PROPERTY DESCRIPTION:

**TMK: (3) 1-2-007:013**

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ADDITIONAL FARM DWELLING AGREEMENT

THIS AGREEMENT made and executed this \_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_, by and between **SERENDIPITY FARMS LLC**, herein called the "First Party," whose mailing address is P.O. Box 3923 Palmer, AK 99645 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) 1-2-007:013, situated within the State Land Use Agricultural district and zoned Agricultural (A-3a) 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:

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**TAMMY R. MOSER**, Landowner

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**MICHAEL R. MOSER**, Landowner

SECOND PARTY:

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

STATE OF \_\_\_\_\_ )  
 ) SS.  
COUNTY OF \_\_\_\_\_ )

On this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_ before me  
personally appeared **TAMMY R. MOSER and MICHAEL R. MOSER**, to me  
known to be the persons described in and who executed the foregoing instrument,  
and acknowledged that they executed the same as their free act and deed.

\_\_\_\_\_  
Notary Public, State of \_\_\_\_\_

My commission expires: \_\_\_\_\_