

William P. Kenoi
Mayor



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County of Hawai'i

PLANNING DEPARTMENT

Duane Kanuha
Director

Bobby Command
Deputy Director

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

April 21, 2014

Gavien DeMello
1077 Ainalako Road
Hilo, HI 96720

Dear Mr. Gavien DeMello:

SUBJECT: Application: Additional Farm Dwelling Agreement (FDA-14-000351)
Applicant: GAVIEN DEMELLO
Land Owner: AUDREY DEMELLO
State Land Use: Agricultural
County Zoning: A-3a (Agricultural, Minimum Building Site of Three Acres)
Land Area: 2.989 Acres
Tax Map Key: (3) 2-4-004:084 Por. of Waiakea Homesteads,
Waiakea, S. Hilo, Hawai'i

We have received your application for Additional Farm Dwellings along with supplemental information for review, which was deemed complete as of February 27, 2014. 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:** Por. of Waiakea Homestead, Waiakea, S. Hilo, Hawai'i
- 2. Lot Size:** 2.989 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. Currently one male cow;
 - b. Maintenance and re-fencing of pasture;
 - c. Re-establishment of various fruit trees, and addition of different varieties;
 - d. Proposed raising of vegetables;
 - e. Proposed raising of bananas;
 - f. Proposed increase amount of cows;
 - g. Proposed raising of sheep, chickens, ducks, and pigs;
 - h. Re-building of livestock Corral;
 - i. Removal of debris, invasive vegetation, and trees.
7. In addition, you have provided a timetable for the next 6 years and a General Excise tax License for the landowner Audrey DeMello.
8. **Estimated Time Required:** The farm activity will require a minimum of fifteen (15) hours per week.
9. **Rationale for Establishing AFD:** Provide enough space for the family rebuilding and maintaining the proposed 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 March 21, 2014.*)
 - b. Department of Health (DOH) has provided comments regarding soil quality of former sugarcane lands. (*See attached copy of DOH memo dated March 20, 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:

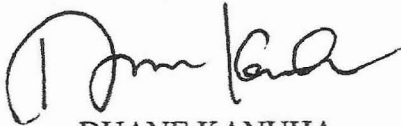
1. Your AFDA has been approved based on the proposed six (6) year Farm Plan which includes existing and proposed income-producing agricultural activities as summarized in this letter.
2. The AFD shall be used for farm-related purposes and provide shelter for persons involved in the agricultural or farm-related 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.

Gavien DeMello
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April 21, 2014

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.
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 April 20, 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 jholmes@hawaiicounty.gov should you have any further questions and/or concerns.

Sincerely,



DUANE KANUHA
Planning Director

JRH/AK:rl

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

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

AFTER RECORDATION, RETURN BY MAIL TO:

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

TITLE OF DOCUMENT:

ADDITIONAL FARM DWELLING AGREEMENT (FDA-13-000340)

PARTIES TO DOCUMENT:

FIRST PARTY: GAVIEN DE MELLO and AUDREY G. DE MELLO

SECOND PARTY: COUNTY OF HAWAI'I

PROPERTY DESCRIPTION:

TMK: (3) 2-4-004:084

ADDITIONAL FARM DWELLING AGREEMENT

THIS AGREEMENT made and executed this ____ day of _____, 20____, by and between **GAVIEN DEMELLO and AUDREY DEMELLO**, herein called the "First Party," whose mailing address is 1077 Ainalako Road, Hilo, HI 96720 and the **COUNTY OF HAWAII**, 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) 2-4-004:084, 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:

AUDREY G. DE MELLO, Landowner

GAVIEN DE MELLO, Applicant

SECOND PARTY:

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

STATE OF _____)
) SS.
COUNTY OF _____)

On this _____ day of _____, 20__ before me
personally appeared **AUDREY G. DE MELLO and GAVIEN DE MELLO**, 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: _____

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.

NEIL ABERCROMBIE
GOVERNOR

PLANNING DEPARTMENT
COUNTY OF HAWAII

2014 MAR 21 AM 8:03



LINDA ROSEN, M.D., M.P.H.
DIRECTOR OF HEALTH

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

MEMORANDUM

DATE: March 20, 2014

TO: Duane Kanuha
Planning Director, County of Hawaii

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

SUBJECT: Application: Additional Farm Dwelling Agreement
(FDA-14-000351)
Applicant: GAVIEN DEMELLO
Land Owner: AUDREY DEMELLO
State Land Use: Agricultural
County Zoning: A-3a(Agricultural, Minimum Building Site of
Three Acres)
Land Area: 2.989 acres
Tax Map Key: (3)2-4-004:084 Por. of Waiakea Homesteads,
Waiakea, S. Hilo, Hawaii

The project lot is located in a noncritical, CWDA(1), area. Under our current wastewater rules, the use of one cesspool per acre is allowed. However, the use of new cesspools may be prohibited in future wastewater rules. Therefore, the type of individual wastewater system to be utilized will be determined by the wastewater rules in effect at the time the applicant applies for a building permit.

Lands formerly used for sugarcane production are now being developed into communities where residential homes, schools and commercial businesses are being constructed. Chemicals associated with the sugarcane industry persist in soil today and may be a threat to public health and the environment. Elevated arsenic levels were discovered in soil at former sugarcane production areas on the islands. The HEER Office has identified former sugarcane production areas for assessment throughout the state and plans to work with property owners to conduct environmental assessments to identify and address elevated soil arsenic levels prior to finalizing development plans for the properties.

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.

090676

Duane Kanuha
March 20, 2014
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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.



DEPARTMENT OF WATER SUPPLY • COUNTY OF HAWAII

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

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

March 21, 2014

TO: Mr. Duane Kanuha, Director
Planning Department

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

SUBJECT: **ADDITIONAL FARM DWELLING AGREEMENT
APPLICATION (FDA 14-000351)
APPLICANT - GAVIEN DEMELLO
TAX MAP KEY 2-4-004:084**

2014 MAR 25 PM 2:40

PLANNING DEPARTMENT
COUNTY OF HAWAII

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

The subject parcel is not within the Department's service zone and is considered out of bounds. Where possible, parcels that are out of bounds can get one unit of water but only one unit. There is an existing 5/8-inch meter to the property and it is adequate for one unit of water serving one dwelling unit at an average usage of up to 400 gallons per day. Inasmuch as this application is proposing an additional dwelling, the installation of a separate 1-inch service lateral with a 5/8-inch meter would normally be required in accordance with the Department's regulations. However, the out of bounds condition will not allow for a second service lateral to the parcel.

In view of the above, the Department is not in a position to support the proposed additional farm dwelling. Should the additional dwelling be allowed based on an alternate source of water such as catchment, the two dwellings may not share the single meter and the plumbing in the two dwellings shall not be interconnected in any way. In addition, properties that are doing agricultural activity, or that have storage tanks such as a catchment tank, are required to have a backflow prevention assembly installed next to the existing meter if one does not already exist. A hand-out sheet is enclosed to help the applicant better understand this requirement.

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

Sincerely yours,

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

LB:dfg

Enc.

copy - Mr. Gavien Demello

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

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

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