

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 14, 2014

Femy G. Lips  
P.O. Box 209  
Kea'au, HI 96749

Dear Ms. Lips:

**SUBJECT: Application: Additional Farm Dwelling Agreement (FDA-14-000357)**  
**Applicant: FEMY G. LIPS**  
**Land Owner: FEMY P. LIPS and GRACIA PASCUA GAMIAO**  
**State Land Use: Agricultural**  
**County Zoning: A-3a (Agricultural, Minimum Building Site of 3 Acres)**  
**Land Area: 2.000 Acres**  
**Tax Map Key: (3) 1-6-009:315, Por. Orchid Land Estates, Por. Keaau**  
**Puna, Hawaii, Por. Ld. Ct. App. 1053 (Map 53)**

We have received your application for Additional Farm Dwellings which was deemed complete as of April 25, 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. Orchid Land Estates, Por. Keaau Puna, Hawaii, Por. Ld. Ct. App. 1053 (Map 53)
2. **Lot Size:** 2.000 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. **Existing Structures:** There is one existing 3 bedroom dwelling on the subject property.
7. **Current Agricultural Activity on Property:** 1 ½ acres planted with existing guava trees.
8. **Farm Plan includes the following existing income-producing agricultural activities:**
  - a. Maintenance and harvest of approximately 160 Guava trees;
  - b. Replanting of one half of an acre with new Guava trees.
9. In addition, you have provided a General Excise Tax License which was issued December 20, 1996.
10. **Estimated Time Required:** The farm activity will require a minimum of between ten (10) and twenty (20) hours per week.
11. **Rationale for Establishing AFD:** To accommodate new farm workers due to the age and health of the current land owners.

### **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 before June 4, 1976, which, pursuant to HRS 205-4.5(b), allows the first dwelling on the lot to be a single-family residential 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 June 16, 2014.*)
  - b. Department of Health (DOH) has provided comments regarding soil quality of former sugarcane lands. (*See attached copy of DOH memo dated June 12, 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.
8. DWS has determined that a County approved water system cannot 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

Femy P. Lips

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to secure a Building Permit (BP) for the AFD. Failure to secure a BP for this AFD on or before July 10, 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](mailto:jholmes@hawaiicounty.gov) should you have any further questions and/or concerns.

Sincerely,



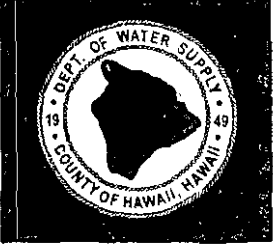
DUANE KANUHA  
Planning Director

JRH/AK:nci

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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)



PLANNING DEPARTMENT  
COUNTY OF HAWAII  
2014 JUN 16 PM 2:39  
**DEPARTMENT OF WATER SUPPLY • COUNTY OF HAWAII**  
345 KĒKŪANAO'A STREET, SUITE 20 • HILO, HAWAII 96720  
TELEPHONE (808) 961-8050 • FAX (808) 961-8657

June 16, 2014

TO: Mr. Duane Kanuha, Director  
Planning Department

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

SUBJECT: **ADDITIONAL FARM DWELLING AGREEMENT APPLICATION**  
**(FDA-14-000357)**  
**APPLICANT – FEMY G. LIPS**  
**TAX MAP KEY: 1-6-009:315**

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. The nearest point of adequacy is an existing 8-inch stub-out, located at the intersection of the Keaau-Pahoa Highway and Orchidland Drive, approximately 2,240 feet from the front of the subject parcel.

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 961-8070, extension 255.

Sincerely yours,

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

TS:sco

092411

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

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




2014 JUN 13 PM 4:35

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

MEMORANDUM

DATE: June 12, 2014

TO: Duane Kanuha  
Planning Director, County of Hawaii

FROM: Newton Inouye   
District Environmental Health Program Chief

SUBJECT: Application: Additional Farm Dwelling Agreement  
(FDA-14-000357)  
Applicant: FEMY G. LIPS  
Land Owner: FEMY P. LIPS and GRACIA PASCUA GAMIAO  
State Land Use: Agricultural  
County Zoning: A-20a(Agricultural, Minimum Building Site of  
Twenty Acres)  
Land Area: 2.000 acres  
Tax Map Key: (3) 1-6-009:315 Por. Orchid Land Estates, Por.  
Keaau, Puna, Hawaii, Por. Ld. Ct. App. 1053  
(Map 53)

Wastewater Branch has no objections to the proposed project. However, as we have no information on existing wastewater systems, we are unable to provide comments. Please have your engineer or contractor submit a completed cesspool information card identifying the location of all wastewater systems and their relationship to existing and/or proposed property lines.

## **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-14-000357)**

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PARTIES TO DOCUMENT:

**FIRST PARTY: FEMY P. LIPS and GRACIA PASCUA GAMIAO**

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

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PROPERTY DESCRIPTION:

**TMK: (3) 1-6-009:315**

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## ADDITIONAL FARM DWELLING AGREEMENT

THIS AGREEMENT made and executed this \_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_, by and between **FEMY P. LIPS and GRACIA PASCUA GAMIAO**, herein called the "First Party," whose mailing address is P.O. Box 209 Kea'au, HI 96749 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) 1-6-009:315, 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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**FEMY P. LIPS**, Landowner

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**GRACIA PASCUA GAMIAO**, 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 **FEMY P. LIPS and GRACIA PASCUA GAMIAO**, 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: \_\_\_\_\_