

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 31, 2017

James A. Agee  
Barbara C. Agee  
15-3138 Halelo Place  
Pāhoa, HI 96778-9744

Dear Mr. & Mrs. Agee:

**SUBJECT: Application: ADDITIONAL FARM DWELLING AGREEMENT  
(FDA-17-000424)**  
**Applicants: JAMES A. & BARBARA C. AGEE**  
**Land Owner: JAMES A. & BARBARA C. AGEE**  
**State Land Use: Agricultural**  
**County Zoning: A-1a**  
**Land Area: 3.0 acres**  
**Location: Parcel 26, Lot 12, at 15-3138 Halelo Place, Pahoā,  
Kaniahiku, Puna, Island of Hawai'i, Hawai'i**  
**Tax Map Key: (3) 1-5-004: 026, Lot 12**

---

Pursuant to the authority conferred by Hawaii County Code – Zoning, Section 25-5-77, Planning Department Rule 13, Farm Dwellings, and state law Hawaii Revised Statutes (HRS) Sec. 205-4.5(a)(4), a Planning Director's review has been completed of your request for **one (1) additional farm dwelling** on the subject property and the request is **approved**, subject to the following:

**BACKGROUND INFORMATION**

1. **Subject Property:** Parcel 26, Lot 12 at 15-3138 Halelo Place, Kaniahiku, Puna, Island of Hawai'i, Hawai'i.
2. **Lot Size:** 3.00 Acres.
3. **State Land Use:** Agricultural (A).
4. **County Zoning:** A-1a.

5. **Proposed Request.** One Additional Farm Dwelling (AFD).
6. **Existing Structures.** First single-family dwelling (permitted 2003); garage and equipment storage (permitted 2006); and, swimming pool and pool house (permitted 2009).
7. **Building Permits.** The available building permit history of the subject property is posted online at the county Real Property Tax Records website. The request for an additional farm dwelling is for a new second dwelling.
8. **Farm Plan.** Existing agricultural activities include:
  - a. Flowering ginger;
  - b. Ti leaf plantings;
  - c. Apple banana and citrus trees.
9. **Evidence of Agricultural Activity.** Copies supplied of current GE Tax License No. GE-025-464-6272-02 (business start date: 02/01/2017); expenditure receipts for farm maintenance costs (weed control products and farm maintenance equipment).

Although agricultural annual income are based on estimated forecasts, the represented agricultural activity is consistent with the state law definition of 'working farm' or 'farming operation' of HRS Sec. 165-2, the Hawaii Right to Farm Act; and, as defined by this state law, a working farm or farm operation means a " ... commercial agricultural ... facility or pursuit ... ". A general definition of commercial agriculture is where the producer is farming with the intent to sell the farm production. This commercial purpose is stated in the application's farm plan and site plan: *Existing crops or plantings grown for harvest and sale*, and is consistent and complies with HRS sec. 165-2.
10. **Rationale for Establishing AFD.** Farm housing for farm worker(s).

### FINDINGS

1. The State Land Use Law of HRS Chapter 205, 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 Sec. 205-4.5(a) **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. Parcel 26, Lot 12 was created before June 4, 1976 by county Subdivision No. 1013 (approved May 7, 1956); therefore, according to HRS Sec. 205-4.5(b), a farming related purpose is not required to establish the first single-family dwelling on this parcel.
3. The Farm Plan, accompanying site plan and the agreement to use the dwelling for agricultural or farm-related activity on the building site, document efforts to comply with the commercial farm purpose of a working farm or a farm operation, as defined HRS Sec. 165-2. **(See Exhibit A- Site Plan)**

### **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 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 AFDA 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 your farm plan shall be implemented as stated 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 AFD 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. All other applicable rules, regulations, and requirements of the County of Hawaii Planning Department (including but not limited to the Hawai'i County Code – Zoning Code Chapter

James A. & Barbara C. Agee  
Page 4  
July 31, 2017

25), Department of Public Works, Department of Water Supply, Fire Department and State of Hawaii Department of Health and any other reviewing agencies/divisions listed on the Building Permit (BP) Application shall be adhered to.

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. Pursuant to county Zoning Code sec. 25-2-7, the approval of the AFD shall be valid for a period of two (2) years from the date of this letter. A Building Permit (BP) to construct the AFD must be obtained within this two year period. Failure to secure a BP for this AFD on or before **July 31, 2019**, may cause the Director to initiate proceedings to invalidate the AFD approval.

Please feel free to contact Earl Lucero of this office at (808) 961-8160 or email [Earl.Lucero@hawaiicounty.gov](mailto:Earl.Lucero@hawaiicounty.gov) should you have any further questions and/or concerns.

Sincerely,



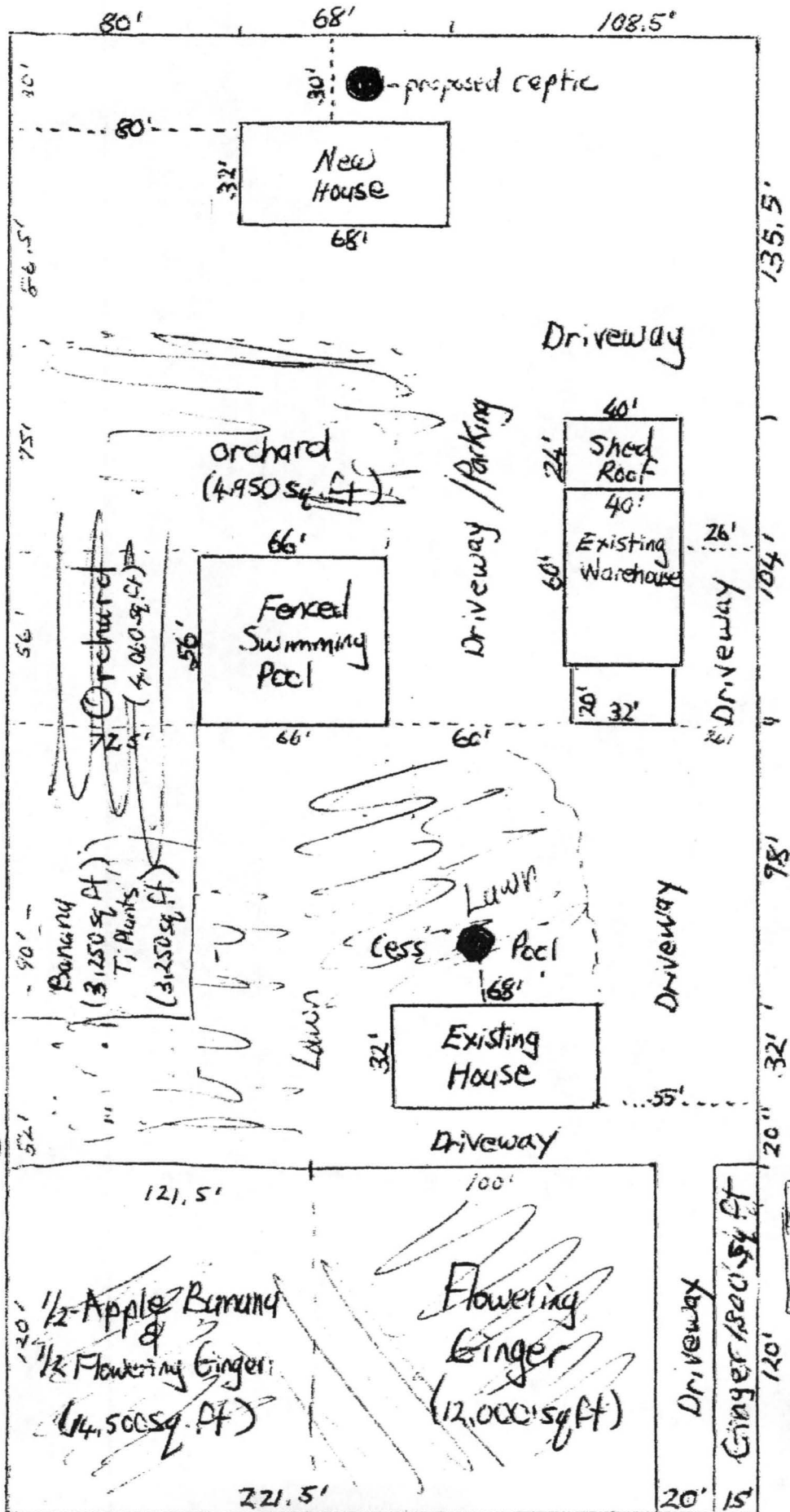
MICHAEL YEE  
Planning Director

EML:nci

\\COH33\planning\public\Admin Permits Division\AFDA\2017\FDA-17-000424 15004026 Agee\APVL.docx

Enclosures: AFDA document  
AFDA document instruction sheet  
Exhibit A

cc via email: GIS Section w/enclosures



(Total depth 509.5')

TMK  
150040260000

15-3138  
Halelo  
Place  
James &  
Barbara  
Agee  
Trust

(Total Width 256.5')

**EXHIBIT**  
**A**

Scale  
1 square = 10 feet

3 Acres Total

Entire  
Property  
is Fenced

---

---

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 (FDA-17-000424)**

---

---

PARTIES TO DOCUMENT:

**FIRST PARTY:            AGEE, JAMES A. & BARBARA C.**

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

---

---

PROPERTY DESCRIPTION:

Lot 26, Kaniahiku, Puna, Hawaii Island

**TMK: (3) 1-5-004:026**

---

---

ADDITIONAL FARM DWELLING AGREEMENT

THIS AGREEMENT made and executed this \_\_\_ day of \_\_\_\_\_, 2017, by and between **JAMES A. & BARBARA C. AGEE**, herein called the "First Party," whose mailing address is 15-3138 Halelo Place, Pāhoa, HI 96778-9744, and the **COUNTY OF HAWAI'I**, herein called the "Second Party."

IT IS HEREBY AGREED that the First Party may construct an additional farm dwelling located on the property described as Lot 26, Kaniahiku, Puna, containing 3.00 acres, **Tax Map Key (3) 1-5-004:026**, situated within the State Land Use Agricultural district and zoned Agricultural (A-1a) 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, Hawai'i 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 Hawai'i County Code Chapter 25, 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 Hawai'i Revised Statutes Sections 205-2, 205-4.5, and 165-2, relative to permitted uses within the State Land Use Agricultural district. This Agreement also conforms with 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:

---

**JAMES A. AGEE**, Landowner

---

**BARBARA C. AGEE**, Landowner

SECOND PARTY:

---

**MICHAEL YEE**, Planning Director  
County of Hawai'i Planning Department

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

On this \_\_\_\_\_ day of \_\_\_\_\_, 2017 before me personally appeared **JAMES A. AGEE & BARBARA C. AGEE**, to me known to be the person described in 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: \_\_\_\_\_