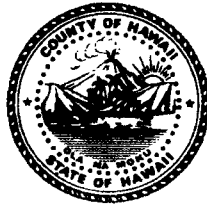


Harry Kim  
Mayor



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

December 29, 2017

James A. & Kathleen M. Love  
P.O. Box 1838  
Honoka'a, HI 96727

Dear Mr. & Mrs. Love:

**SUBJECT: Application: ADDITIONAL FARM DWELLING AGREEMENT  
(FDA-17-000439)**  
**Applicants: JAMES A. & KATHLEEN M. LOVE**  
**Land Owners: JAMES A. & KATHLEEN M. LOVE**  
**State Land Use: Agricultural**  
**County Zoning: A-40a**  
**Land Area: 3.0 acres**  
**Location: 45-369 Lehua Street, Haina, Honokaa, Hawaii**  
**Tax Map Key: (3) 4-5-002:067, Lot 15**

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Pursuant to the authority of Hawaii Revised Statutes (HRS) Section (Sec.) 205-4.5(a)(4), Hawaii County Code Zoning, Sec. 25-5-77(b) and (c), and the County of Hawaii Planning Department Rule 13, Farm Dwellings, we have reviewed your application for the subject property, and the request for **one (1) additional farm dwelling** is **approved**, subject to the following official comments, and approval conditions.

**BACKGROUND INFORMATION**

1. **Subject Property:** A portion of Grant 3156: Apana 1, Nienie-Namoku-Haina, Hamakua; located at 45-369 Lehua Street, Haina, Honokaa, Haw. Isld., Hawai'i.
2. **Lot Size:** 3.0 Acres.
3. **State Land Use:** Agricultural (A).
4. **County Zoning:** A-40a.

5. **Proposed Request:** One Additional (single-family) Farm Dwelling.
6. **Existing Structures:** Existing permitted single-family dwelling, Building Permit#: B2004-0422H, completed on 7/28/05.
7. **Farm Plan:** Includes the following existing and continual income-producing agricultural activities.
  - a. **Existing agricultural activities on 3 acres, include:**
    - i. Approximately 1,500 sq. ft. in citrus trees, bananas, ulu-breadfruit, and avocado;
    - ii. Approximately 800 sq. ft. in passion fruit and pineapple;
    - iii. Approximately 960 sq. ft. in household garden / test garden;
    - iv. Approximately 6,000 sq. ft. in Hawaiian and “no till” demo project;
    - v. Approximate total of 18,520 sq. ft. in agricultural in current agricultural land use.

According to the official public records of the county Real Property Tax Division, the subject property of three acres are officially assessed in agricultural usage, production, and value.

8. **Evidence of Future Agricultural Activity:** Future agriculture acreage-labor hours-and income production are stated in the submitted Farm Plan Summary, part or schedule C, and the attachment page ‘Timetable for Implementation’.
9. **Rationale for Establishing AFD:** Accommodate a family co-manager of the farm operation, as well as to provide affordable housing to full or part time farm workers.

### **FINDINGS**

1. Hawai‘i Revised Statutes (HRS) Chapter 205 is the state law that regulates lands classified in the State Land Use Agricultural District. Generally, this state law does not permit residential dwellings in the state Agricultural district unless the dwelling is in connection to an agricultural activity or is a farm dwelling. A **farm dwelling**, defined by HRS Sec. 205-4.5(a)(4), means a single family dwelling ***located on and used in connection with a farm or where agricultural activity provides income to the family occupying the dwelling.*** (Emphasis added).
2. Parcel 67 was created by a grant of August 8, 1876, before the effective date of Sec. 205-4.5(a)(4), the state law of farm dwelling requirements, or before June 4, 1976.

Therefore, for lots created before June 4, 1976, the state law of HRS 205-4.5(b) allows the first dwelling to be a single-family dwelling that is not subject to the farm dwelling requirements of sec. 205-4.5(a)(4).

3. **Agricultural Income & Commercial Working Farm or Farming Operation.** The copies of income receipts from the sale of agricultural produce harvested, substantiate the *income-producing agricultural activity* required in the state law of Sec. 205-4.5(a)(4). The agricultural income receipts demonstrate that the proposed additional farm dwelling will be located on and used in connection with a farm enterprise, a performance requirement of sec. 205-4.5(a)(4).

Secondly, the income receipts document that the harvest for sale of crops comply with the state statutory definition of '*a working farm or a farming operation*' as defined in HRS Sec. 165-2, of the 'Hawaii Right to Farm Act'. This state definition is referred to since it is a state law of general application and HRS Chapter 205 references the definition of '*a working farm or a farming operation*' in three places: for ag tourism [Sec. 205-4.5 (a)(13) and 205-2 (d)(11)]; and, for ag education programs [Sec. 205-4.5 (a)(19)].

Generally, the state statutory definition for a 'farming operation' means "*a commercial agricultural... facility or pursuit conducted in whole or in part...*". Commercial agriculture, although undefined in HRS Chapter 165, is generally defined to be farming with the intent to sell the production harvest; or, it is a farm where ag production is for the commercial purpose for sale in the marketplace, for the purpose to participate in commerce. The farm income receipts document the sale of its agricultural harvest and that fulfills the definition and minimum commercial requirements of HRS Sec. 165-2, 'farming operation': where the farm production is harvested and prepared for the purpose of commercial sale.

4. The following two government agencies submitted official comments:
  - a. County of Hawaii Department of Water Supply (DWS) Memorandum dated Nov. 30, 2017. **(Exhibit A)**
  - b. State of Hawaii Department of Health (DOH) Memorandum dated December 13, 2017. **(Exhibit B)**

#### **DECISION AND CONDITIONS**

In view of the above, your request to construct **one (1) Additional Farm Dwelling** on parcel 67, the subject<sup>7</sup> property, is **approved subject to the following conditions:**

1. The AFDA is approved based on existing and continual agricultural activity as summarized in this approval 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 State of Hawai'i Bureau of Conveyances, which states that the additional dwelling shall be used for farm-related purposes.
4. The farming enterprise shall be commercial in nature consistent with the state laws of HRS Sec. 205-4.5(a)(4) –“ ... located on and used in connection with a farm ... or where agricultural activity provides income to the family occupying the dwelling”; and, also with Sec. 165-2, “ ... a working farm or a farming operation ... “. (Emphasis added).

Upon reasonable prior notice and a mutual agreed upon date and time, the Planning Department shall be allowed to inspect the farm.

5. 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 signature(s) along with a check payable 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. Compliance is required with all other applicable rules, regulations, standards and requirements of the county Planning Department, Department of Public Works, Department of Water Supply, Fire Department, the State Department of Health; and, any other reviewing agency listed on the county Building Permit (BP) application.
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. The official comments of the County Department of Water Supply states that county water service cannot be extended to the proposed additional farm dwelling (AFD); therefore, all dwellings on parcel 67 are not authorized to share the existing county water meter of this property and the water plumbing system between any of these dwellings shall not be interconnected in any form or manner.

James A. & Kathleen M. Love  
Page 5  
December 29, 2017

According to official comments from the State Department of Health, the proposed AFD will require submittal of plans for an individual wastewater system (IWS) (a septic tank system or an aerobic treatment system). Procedurally, this issue can be addressed in the BP application process for the proposed construction of the AFD.

9. From the date of this approval letter, this AFD shall be valid for a period of two (2) years to secure a Building Permit (BP) for the AFD. Failure to secure a BP for this AFD on or before **December 29, 2019**, may cause the Director to initiate proceedings to invalidate the AFD.

Please feel free to contact Earl Lucero of this office at (808) 961-8160 or email [elucero@hawaiicounty.gov](mailto:elucero@hawaiicounty.gov) to discuss any questions or concerns that may arise.

Sincerely,



MICHAEL YEE  
Planning Director

EML:nci  
\\COH33\planning\public\Admin Permits Division\AFDA\2017\Earl\FDA-17-000439 45002067 Love\APVL.docx

Enclosures: AFDA document  
AFDA document instruction sheet  
Exhibits A & B

cc: Chief Sanitarian, DOH  
Manager-Chief Engineer, DWS

cc via email: GIS Section w/enclosures  
Glenn Sako, State Department of Research and Development  
Keita Jo, County Real Property Tax Division



DEPARTMENT

**DEPARTMENT OF WATER SUPPLY • COUNTY OF HAWAII**

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

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

November 30, 2017

TO: Mr. Michael Yee, Director  
 Planning Department

FROM: Keith K. Okamoto, Manager-Chief Engineer

SUBJECT: **Additional Farm Dwelling Agreement Application**  
**(FDA-17-000439)**  
**Applicant – James A. III and Kathleen M. Love**  
**Tax Map Key 4-5-002:067**

2017 DEC 4 PM 2 54  
 PLANNING DEPARTMENT  
 COUNTY OF HAWAII

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

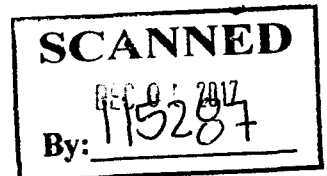
Please be informed that an existing 5/8-inch meter (Account No. 650-15215) services this property and is adequate for only one (1) dwelling unit at an average of 400 gallons per day. Inasmuch as this application is proposing an additional dwelling, the installation of a separate 5/8-inch meter would normally be required in accordance with the Department's regulations. However, the Department's existing water system facilities cannot support an additional water meter at this time. Extensive improvements and additions, which may include, but not be limited to, source, storage, booster pumps, transmission, and distribution facilities, would be required. Currently, sufficient funding is not available from the Department for such improvements and no time schedule is set.

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 the application be approved, all dwellings shall not share the existing meter, and the water system plumbing between any dwellings shall not be interconnected in any way.

Further, as the applicant indicates that there is existing and proposed agricultural activity within the subject parcel, a reduced pressure type backflow prevention assembly must be installed (if one does not already exist) within five (5) feet of the existing meter on private property. The installation of the backflow prevention assembly must be inspected and approved by the Department before commencement of water service.

**EXHIBIT**

A



*... 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  
November 30, 2017

Should there be any questions, please contact Mr. Troy Samura of our Water Resources and Planning Branch at 961-8070, extension 255.

Sincerely yours,

A handwritten signature in black ink, appearing to read 'Keith K. Okamoto', written in a cursive style.

Keith K. Okamoto, P.E.  
Manager-Chief Engineer

TS:dfg

copy – Mr. James A. III and Ms. Kathleen M. Love  
DWS Customer Service Sections (Hilo and Waimea)  
DWS Cross Connection Section

DAVID Y. IGE  
GOVERNOR OF HAWAII



VIRGINIA PRESSLER, M.D.  
DIRECTOR OF HEALTH

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

MEMORANDUM

DATE: December 13, 2017

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

FROM: Eric Honda *EH*  
District Environmental Health Program Chief

SUBJECT: Application: ADDITIONAL FARM DWELLING AGREEMENT  
FDA-17-000439  
Applicants: JAMES A III & KATHLEEN M. LOVE  
LandOwner: JAMES A III & KATHLEEN M. LOVE  
TMK: 4-5-002:067

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PLANNING DEPARTMENT  
COUNTY OF HAWAII

The wastewater system is inadequate for the proposed project. Have your engineer submit to DOH plans for an additional individual wastewater system.

**EXHIBIT**

B

