



4. **State Land Use:** Agricultural (A).
5. **County Zoning:** Agricultural - 1 acre (A-1a).
6. **Building Permits.** Hawai'i County Real Property Tax Office records indicate that Building Permit 772349 was issued on October 14, 1978, and finalized in 1979, to the subject property. The single-family dwelling consists of 4 bedrooms, 3 baths, living room, kitchen, dining area and a doughboy water tank. Subsequent Building Permit B2011-1180H, was issued on August 29, 2011, and finalized on August 23, 2011, to the subject property for an addition of a two-car garage and breezeway.
7. **Subdivision No. 3660 approved on September 19, 1975.** Subdivision No. 3660 created parcel 26, lot 21. This official land subdivision confirms that the subject property is a legal lot of record and that it came into existence before June 4, 1976.
8. **Evidence of Agricultural Activity:** Farm Plan and evidence of General Excise Tax License.
9. **Proposed Request:** To accommodate additional farm help in the maintenance and harvest of the agricultural products.
10. **Rationale for Establishing the Additional Farm Dwelling (AFD):** To accommodate additional farm help in the maintenance and harvest of the agricultural products.
11. **Farm Plan Summary and Site Plan.** The Farm Site Plan depicts a farm for producing agriculture with approximately  $\frac{1}{4}$  of an acre land cultivated in coconut trees, breadfruit (ulu) trees, ti leaf plants and dry land taro (kalo).

#### 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)

In general, according to HRS Sec. 205-4.5(a)(4), a **farm dwelling 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). The county farm dwelling definitions of Zoning Code Sec. 25-5-77(b), 25-1-5(b), and Planning Department Rule 13-3(b) are consistent with the State law definition.

2. County Planning Department records confirm that subject property was created prior June 4, 1976 by Subdivision No. 3660, which was approved on September 19, 1975. The property is located and classified in the State Land Use Agricultural district. Therefore, according to the above discussed State law of Sec. 205-4.5(b), 205-4.5 (a)(4), and the above cited county code and rule, these laws require the first and second dwellings on parcel 26 to be farm dwellings; the existing first dwelling is required to be a farm dwelling, and an application for a second dwelling can be made for an additional farm dwelling.

Since the subject lot was created prior to June 4, 1976, which pursuant to HRS 205-4.5(b), allows the first dwelling on the lot to be a single-family dwelling.

3. The documentation of expenditure and investment costs to pursue and realize the existing farm, the submitted farm plan, and the agreement to use the dwelling for farm-related agricultural activity are documentations that substantiate and demonstrate that the applicant's efforts are consistent with HRS Chapter 205, the State law that requires *a working farm or a farming operation*, as defined in HRS Sec. 165-2, the Hawaii Right to Farm Act.

In general, HRS Sec. 165-2 defines *a working farm or a farming operation* to mean "... a commercial agricultural facility or pursuit conducted in whole or in part ...; the planting, cultivating, harvesting, and processing of crops; ..." (emphasis added), and as discussed above at Findings #1, HRS Sec. 205-4.5(a)(4) requires the agricultural activity to provide income to the family occupying the farm dwelling.

The State and County laws do not define the terms *commercial agriculture or farm and or pursuit*; however, the available general definition for *commercial farming or commercial agriculture* means a producer-farmer is farming *with the intent to sell* some or all of their agricultural production. In commercial farming, the agricultural harvest (in whatever form that takes) is for a commercial purpose which the agricultural harvest *is produced with the purpose to sell it in the marketplace*.

In the context of the definition of *farming operation or working farm*, the term, *pursuit* is administratively interpreted to include efforts, investment costs, and expenditures for an agricultural purpose that *pursue, or are in pursuit* to establish or maintain a commercial farm.

Therefore, the farming enterprise is required to be a *commercial working farm or farming operation*, as stated in HRS Chapters 205 and 165, the State laws that preempt this issue.

County of Hawaii Zoning Code Sec. 25-4-2 (a)(1) and (2), regulates conditions for construction of buildings designed for human occupancy, which includes additional farm dwellings. This Zoning Code standard requires two improvements for the parcel's additional farm dwelling:

The Honorable Kaiali'i Kahele  
Ms. Linda Kahele  
Page 4  
October 24, 2018

- a. Generally, these improvement requirements are included in the county building permit application process. It requires an approved water system to provide water to the parcel building site. The water service can be delivered from the county water system or from a private or individual delivery system. (See Condition 7)
- b. The second required improvement is a wastewater system approved by the State of Hawaii Department of Health. (See Condition 8)
- c. In addition, the following agencies have submitted their comments as identified below:
  - 1) The Department of Water Supply (DWS): See attached memorandum dated September 6, 2018. (**Exhibit A**)
  - 2) The State of Hawai'i Department of Health (DOH): See attached memorandum dated August 3, 2018. (**Exhibit B**)

#### **DECISION AND CONDITIONS**

As a result of the above findings and discussion, your request to construct one (1) Additional Farm Dwelling is approved, subject to the following conditions:

1. Your AFDA (or agreement) has been approved based on the existing and future agricultural activity as summarized in this letter and represented on the submitted Farm Plan Summary and other application materials.
2. The First Party, identified in the Additional Farm Dwelling Agreement, shall allow the Second Party, the Hawaii County Planning Department or its representative, to inspect the farm operation upon reasonable prior notice and at a mutually agreeable date and time.
3. The agreement shall run with the land and apply to all persons who may, now or in the future, use or occupy the AFD. The enclosed AFDA shall 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** (Regular System) in accordance with the enclosed AFDA Instructions.
4. The farming operation shall be commercial in nature and the Additional Farm Dwelling shall be used for commercial 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 AFD.

5. 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.
6. **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.**
7. The applicant shall comply and accept the following Department of Water Supply conditions:
  - a. Installation of a 1-inch service lateral to service 5/8-inch meter, which shall be restricted to a maximum daily flow of 400 gallons.
  - b. Submit construction plans, prepared by a professional engineer licensed in the State of Hawai'i for review and approval.
  - c. Remittance of the following charge, which are subject to change, to our Customer Service Section:

FACILITIES CHARGE (FC):

|   |                   |
|---|-------------------|
| <u>2<sup>nd</sup> service to the parcel</u> | <u>\$5,500.00</u> |
| Total (Subject to Change)                   | \$5,500.00        |

8. The applicant shall comply and accept the following Department of Health condition:
  - a. The wastewater system is inadequate for the proposed project. Have your engineer submit to DOH plans for a new wastewater system.
9. Compliance is required with all other applicable rules, regulations, and requirements of HRS Chapters 205 and 165, the County Planning Department (including but not limited to the County of Hawai'i Code Chapter 25, Zoning), Department of Public Works, Department of Water Supply, Fire Department, the State of Hawaii Department of Health, and any other reviewing agencies/divisions listed on the Building Permit application.
10. For the construction of the proposed AFD, the applicant shall comply with all standards, specifications, conditions, and requirements of the county building permit application process of the County Department of Water Supply, and the conditions for construction of buildings designed for human occupancy of the Hawaii County Zoning Code Sec. 25-4-2 (a)(1) and (2).
11. The decision to approve the Additional Farm Dwelling shall be valid for a period of 2-years from the date of this approved letter. Therefore, there is a 2-year period to secure a building permit for the AFD.

The Honorable Kaiali'i Kahele  
Ms. Linda Kahele  
Page 6  
October 24, 2018

Failure to secure a building permit to construct the AFD on or before the 2-year period expires, may be cause for the Planning Director to initiate proceedings to rescind and invalidate the AFD approval.

Should any further questions or concerns arise, please contact staff planner, Larry Nakayama at (808) 961-8149 or email [Larry.Nakayama@hawaiicounty.gov](mailto:Larry.Nakayama@hawaiicounty.gov).

Sincerely,



MICHAEL YEE  
Planning Director

LHN:nci

\\COH33\planning\public\Admin Permits Division\AFDA\2018\Larry\FDA-18-000447 Kahele\APVL.docx

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

cc: Chief Sanitarian, DOH  
Manager-Chief Engineer, DWS  
  
Glenn Sako, County Department of Research & Development  
[glenn.sako@hawaiicounty.gov](mailto:glenn.sako@hawaiicounty.gov)  
  
Lisa Miura, Administrator, Real Property Tax Office  
[Lisa.Miura@hawaiicounty.gov](mailto:Lisa.Miura@hawaiicounty.gov)

cc via email: GIS Section w/enclosures



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

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

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

September 6, 2018

TO: Mr. Michael Yee, Director  
 Planning Department

FROM: Keith K. Okamoto, Manager-Chief Engineer

SUBJECT: **Additional Farm Dwelling Agreement Application  
 (FDA-18-000447)  
 Applicant – Kaialii Kahele and Linda Kahele  
 Tax Map Key 2-4-065:026**

2018 SEP 6 pm 2 41  
 PLANNING DEPARTMENT  
 COUNTY OF HAWAII

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

Please be informed that the subject parcel is currently served by a 5/8-inch meter, which is adequate for only one dwelling at an average daily usage of 400 gallons. Inasmuch as this application is proposing an additional dwelling, the installation of a separate 5/8-inch meter will be required at a minimum.

Water can be made available from the Department's existing 4-inch waterline within Keneki Place, fronting the subject parcel.

Therefore, the Department has no objections to the proposed application, subject to the applicant understanding and accepting the following conditions:

1. Installation of a 1-inch service lateral to service a 5/8-inch meter, which shall be restricted to a maximum daily flow of 400 gallons.
2. Submit construction plans, prepared by a professional engineer licensed in the State of Hawai'i, for review and approval.
3. 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 |
| Total (Subject to Change)             | \$5,500.00 |

**EXHIBIT**

A

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

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

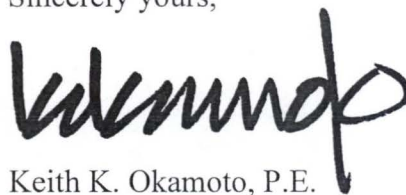
SEP 06 2018  
 120292

Mr. Michael Yee, Director  
Page 2  
September 6, 2018

This is due and payable upon completion of the installation of the required water system improvements and prior to water service being granted.

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:dmj

copy – Kaialii and Linda Kahele  
DWS Customer Service (Hilo)





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

MEMORANDUM

DATE: August 3, 2018

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

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

SUBJECT: Application: ADDITIONAL FARM SWELLING AGREEMENT  
FDA-18-000447  
Applicants: KAIAKII KAHELE AND LINDA KAHELE  
Owners: KAIAKII KAHELE AND LINDA KAHELE  
SLU: Agricultural  
CZ: A-1a  
LandArea: 1.045 acres  
Location: Being a Portion of Grant 8667, Por. Waiakea Homesteads,  
2<sup>nd</sup> Series, Waiakea, South Hilo, Hawaii  
TMK: 2-4-065:026

2018 AUG 7 PM 5 43  
PLANNING DEPARTMENT  
COUNTY OF HAWAII

The wastewater system is inadequate for the proposed project. Have your engineer submit to DOH plans for a new wastewater system.

**EXHIBIT**

B

119863