

Harry Kim  
Mayor



Michael Yee  
Director

Daryn Arai  
Deputy Director

West Hawai'i Office  
74-5044 Ane Keohokalole Hwy  
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**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 3, 2018

Stephen W. Lally, Trustee  
Stephen W. Lally Revocable Trust of 2001  
P.O. Box 1486  
Kapaau, Hawaii 96755

Dear Mr. Lally:

**SUBJECT: Additional Farm Dwelling Agreement (FDA-18-000456)**  
**Applicant(s): Stephen W. Lally, Trustee**  
**Owner(s): Stephen W. Lally Revocable Trust of 2001**  
**State Land Use: Agricultural**  
**County Zoning: Agricultural (A-20a)**  
**Land Area: 1.375 Acres**  
**TMK: (3) 5-4-004:018**

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 TMK: 5-4-004:018 with associated agricultural or farm-related activity on the above subject properties and have **approved** your request subject to the following.

**BACKGROUND INFORMATION**

1. **Subject Property:** Being A Portion of Honopueo, North Kohala Island of Hawai'i, Hawai'i.
2. **Lot Size:** 1.375 Acres.
3. **State Land Use:** Agricultural (A).
4. **County Zoning:** A-20a.
5. **Proposed Request:** One Additional Farm Dwelling.

6. **Existing Structures:** There is building permit no. BK2018-01098 issued on June 14, 2018 for a single-family dwelling.
7. **Building Permits:** There is a building permit on record in Real Property Tax Records for the existing single family dwelling.
8. **Farm Plan:** Includes the following existing and expanded income-producing agricultural activities.
  - a. **Existing agricultural activities include:**
    - i. There is approximately 10,945 square feet of various crops of TMK: 5-4-004:018 that include: turmeric, apple banana, pineapple, citrus and avocado.
9. **Evidence of Agricultural Activity:** There is evidence of agricultural income and expenses reported on their profit and loss statement submitted to the State Department of Taxation.
10. **Rationale for Establishing AFD:** To accommodate farm help.

### 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 for the proposed additional farm dwelling (TMK: 5-4-004:018) was created by subdivision (SUB 13-001261) approved on June 4, 2013, 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 income-producing agricultural activity.
4. In addition, the following agencies have submitted their comments as identified below:
  - a. Department of Water Supply (DWS) memo September 17, 2018.
  - b. Department of Health (DOH) memo dated October 1, 2018.

### **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 expanded 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 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 up to seventy-five percent (75%) of your proposed farm plan shall be implemented 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 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 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.
7. The applicant is responsible for any State and Federal tax consequences due to the income produced from the farm activity.

8. 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.
9. DWS has noted that the subject parcel does not have a County approved water service at present, and an additional water service is not available for the additional dwelling.
10. 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 **December 2, 2020**, may cause the Director to initiate proceedings to invalidate the AFD.
11. The site plans show a detached bedroom within the parcel. Be aware that the addition of a "Kitchen" as described in Chapter 25, 25-1-5, to this detached bedroom would create a non-permitted additional farm dwelling, which would be a violation of Section 205-4.5, Hawaii Revised Statutes.
12. An initial extension of time for the performance of conditions within the permit may be granted by the Planning Director upon the following circumstances:
  - A. Non-performance is the result of conditions that could not have been foreseen or are beyond the control of the applicants, successors, or assigns and that are not the result of their fault or negligence.
  - B. Granting of the time extension would not be contrary to the General Plan or Zoning Code.
  - C. Granting of the time extension would not be contrary to the original reasons for the granting of the permit.
  - D. The time extension granted shall be for a period not to exceed the period originally granted for performance (i.e., a condition to be performed within one year may be extended for up to one additional year).

Should any of these conditions not be met or substantially complied with in a timely fashion, the Planning Director may initiate procedures to revoke this permit.

In reference to the Department of Water Supply's comment, we suggest the following:

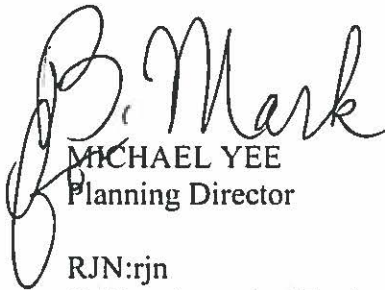
- a. "Any existing and/or future dwellings not serviced by County water system constructed on the property shall have a minimum 6,000 gallon water storage facility for domestic consumption for water catchment. This catchment system shall adhere to the Department of Public Works, Building Division's "Guidelines for owners of Rain Catchment Water Systems" as well as the State Department of Health requirements related to water testing and water purifying devices.

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- b. Provide a water supply system sufficient for fire fighting consisting of a minimum 3,000 gallons of water per existing and/or proposed future dwelling on the property meeting with the approval of the Hawaii County Fire Department. If dwellings are more than 50 feet apart, 4,000 gallons of water per dwelling will be required”.

Please feel free to contact Rosalind Newlon of this office at (808) 323-4770 or email [rosalind.newlon@hawaiicounty.gov](mailto:rosalind.newlon@hawaiicounty.gov) should you have any further questions and/or concerns.

Sincerely,



MICHAEL YEE  
Planning Director

RJN:rjn

C:\Users\rnewlon\Desktop\Newlon\AFDA Approval\AFDAap-5-4-004-004 and 018 Lally Trust.doc

Enclosures: AFDA document  
AFDA document instruction sheet

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

Marc A. Morinaga Trust  
Susan Morinaga  
45-515 Iouli Place  
Kaneohe, HI 96744

cc via email: GIS Section w/enclosures

Glenn Sako, Department of Research and Development (R&D)  
[glenn.sako@hawaiicounty.gov](mailto:glenn.sako@hawaiicounty.gov)

Kamran Fujimoto, Natural Resources Conservation Services (NRCS)  
[kamran.fujimoto@hi.nacdnet.net](mailto:kamran.fujimoto@hi.nacdnet.net)

Lisa Miura Real Property Tax Division (RPT)

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[Lisa.Miura@hawaiicounty.gov](mailto:Lisa.Miura@hawaiicounty.gov)

## **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 5). Photocopies of this page may be made and sent to any persons listed on the page 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.**

**Please have your notary print their name underneath their signature line.**

2. Enclose a check or money order in the amount of \$41.00, made out to the Bureau of Conveyance, for the Bureau of Conveyance 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, Hawai'i 96720

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TITLE OF DOCUMENT:

**ADDITIONAL FARM DWELLING AGREEMENT (FDA-18-000456)**

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PARTIES TO DOCUMENT:

**FIRST PARTY:           STEPHEN W. LALLY REVOCABLE TRUST OF 2001**

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

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PROPERTY DESCRIPTION:

Being A Portion of Honopueo, North Kohala

**TMK: (3) 5-4-004:018**

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ADDITIONAL FARM DWELLING AGREEMENT

THIS AGREEMENT made and executed this \_\_\_ day of \_\_\_\_\_, 2018, by and between **STEPHEN W. LALLY REVOCABLE TRUST OF 2001** herein called the "First Party," whose mailing address is P.O. Box 1486, Kapaau, HI, 96755, 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 at TMK: 5-4-004:018 Being A Portion of Honopueo, North Kohala, containing approximately 1.375 acres, Tax Map Key (3) 5-4-004:018, situated within the State Land Use Agricultural district and zoned Agricultural (A-20a)

IT IS HEREBY ACKNOWLEDGED that the First Party is the legal owner(s) of the properties 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 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 Hawai'i 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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**STEPHEN W. LALLY, Trustee**  
**STEPHEN W. LALLY REVOCABLE TRUST OF 2001**

SECOND PARTY:

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

STATE OF HAWAII

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) SS.

COUNTY OF HAWAII

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On this \_\_\_\_\_ day of \_\_\_\_\_, 2018 before me personally appeared **STEPHEN W. LALLY**, 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 Hawaii

My commission expires: \_\_\_\_\_

STATE OF HAWAII )  
 ) SS.  
 COUNTY OF HAWAII )

On this \_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_, before me personally appeared Michael Yee to me personally known, who, being by me duly sworn, did say that he is the Planning Director of the County of Hawai'i, and that the Planning Department of the County of Hawai'i has no corporate seal; and that the instrument was signed on behalf of the Planning Department of the County of Hawai'i, a government agency, and said Michael Yee acknowledged the instrument to be the free act and deed of said Planning Department, County of Hawai'i.

\_\_\_\_\_  
 Rachelle Ley

Notary Public, State of Hawai'i  
 Third Judicial Circuit

My Commission Expires: June 12, 2019

Document	No. of
Date: _____	Pages: _____
Notary Name:	
Rachelle Ley	Third Judicial Circuit
Doc. Description:	
_____	
_____	
Notary Signature	Date