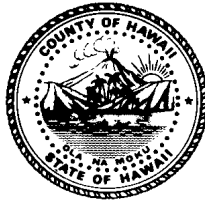


Mitchell D. Roth  
*Mayor*

Lee E. Lord  
*Managing Director*

West Hawai'i Office  
74-5044 Ane Keohokālole Hwy  
Kailua-Kona, Hawai'i 96740  
Phone (808) 323-4770  
Fax (808) 327-3563



## County of Hawai'i

### PLANNING DEPARTMENT

Zendo Kern  
*Director*

Jeffrey W. Darrow  
*Deputy Director*

East Hawai'i Office  
101 Pauahi Street, Suite 3  
Hilo, Hawai'i 96720  
Phone (808) 961-8288  
Fax (808) 961-8742

April 12, 2022

Richard & Charmaine Hellmund  
P.O. Box 831139  
Pepe'ekeō, HI 96783-1072

**SUBJECT: Application:            ADDITIONAL FARM DWELLING AGREEMENT  
(FDA-20-000481)**  
**Applicant(s):            Richard A. Hellmund, Charmaine M.B. Hellmund**  
**Landowner(s):           Richard A. Hellmund, Charmaine M.B. Hellmund**  
**Location:                Kapehu, Kaupakuea, Kahua & Makahanaloa, S. Hilo, HI**  
**Tax Map Key:            (3) 2-8-008:044, Lot 10**

Pursuant to state law, Hawai'i Revised Statutes (HRS) section (sec.) 205-4.5 (a)(4), Hawai'i County Code sec. 25-5-77(c) Additional Farm Dwellings, and County of Hawai'i Planning Department Rule 13-4 Farm Dwellings, a Planning Director's review has been completed on your request for **one (1) Additional Farm Dwelling**. The application request is **approved** subject to the following background information, findings, and conditions of approval.

### **BACKGROUND INFORMATION**

1. **Subject Property:** TMK: (3) 2-8-008:044, Lot 10, Subdivision No. (SUB-04-7644r) (May 10, 2004), 28-3254 Beach Road, Pepe'ekeō, Hawai'i 96783.
2. **Lot Size:** 2.9460 acre(s) or 128,328 square feet.
3. **County Zoning:** A-20a (Agricultural District, minimum building site 20 acres).
4. **State Land Use:** Agricultural (A).

The subject parcel is in the State Land Use Agricultural District and its County Zoning classification is in A-20a and is therefore, designated for agricultural land use as defined by the State Land Use law and the County Zoning classification.

Richard A. & Charmaine M.B. Hellmund

April 12, 2022

Page 2

## **FINDINGS**

1. **Building Permits:** Real Property Tax records and the information submitted with the applicant's Farm Site Plan confirms one farm dwelling exists on the subject parcel. Building Division records indicate that this "First Farm Dwelling" was constructed by permit in 2005, Building Permit No. B2005-2926H.
2. **Proposed Request: Additional Farm Dwelling (Second Farm Dwelling).** Agricultural State Land Use and County Zoning allows the landowner to apply for an Additional Farm Dwelling (AFD) on this property, pursuant to HRS sec. 205-4.5 (a)(4) or (b) and Hawai'i County Zoning Code sec. 25-5-77 (b) or (c), and Hawai'i County Planning Department Rule 13-4 (c).
3. **Proposed Agricultural Activity:** There is evidence of existing agricultural activity on the subject parcel TMK: (3) 2-8-008:044, and the applicant plans to continually produce and process products from their agricultural farm operations. The applicant is a vendor of the 'Ulu Co-operative, and although harvesting occurs during the months of July and December, they have already harvested nearly 2,000 pounds of ulu. They plan to increase their crop yield to 11,000 pounds per year. In addition to the 'ulu crops planted, there are soursop, avocado, papaya, lychee, lemon, orange, curry tree, cacao, banana, calamansi, coconut, pineapple, and free range chickens.
4. **Evidence of Agricultural Activity:**
  - a. Real Property Tax: (RPT) records show that the property is not currently (2022) assessed for any agricultural use on the property. The property class is homeowner.
  - b. Income Tax Records: Evidence of a general excise tax license and filing was submitted, including a copy of Schedule C Form 1040 Profit and Loss from Business.
  - c. Receipts of income received from sale of agricultural products.
5. **Satisfaction of Statutory Standards:** To substantiate the development of commercial agriculture on the subject parcel, the landowner-applicants have submitted documentation to satisfy the statutory standards of the two state laws germane to evaluating this application:
  - a) HRS, Section 204-4.5 (a)(4) for a 'farm dwelling,' states, in part, "... *a single-family dwelling located on and used in connection with a farm, ..., or where agricultural activity provides income to the family occupying the [farm] dwelling, ...*" [emphasis added]; and
  - b) HRS, Section 165-2 defines "farming operation" to mean "... *a commercial agricultural ... [or whatever type of agriculture is undertaken] facility or pursuit conducted, in whole or in part, ...*" [emphasis added].

Richard A. & Charmaine M.B. Hellmund

April 12, 2022

Page 3

6. **Rationale for Establishing AFD:** The County of Hawai'i Code requires that the applicant submit evidence of the applicant's continual agricultural activity" on farm plan. H.C.C. § 25-5-77(c)(2) It strongly suggests that the applicant should have some present agricultural activity in order to qualify for a second farm dwelling. The applicant has provided the necessary documents to prove there is existing and continual agricultural activity on parcel TMK: (3) 2-8-008:044. The owners purchased the parcel in June of 2020, with an existing orchard of 'ulu and avocado trees. They have done an extensive amount of maintenance on the orchards to remove invasive weeds. Currently the owners spend 40 hours weekly in the orchards, harvesting and maintaining crops at hand and will prepare for the seasons ahead. The 'Ulu Co-operative pays \$1.00 per pound for raw 'ulu and the owners have already harvested at least 2,000 pounds of 'ulu and expect a yield of 11,000 pounds by the end of the year.

### **AGENCY COMMENTS**

1. **Real Property Tax (RPT):** No comments received.
2. **Department of Water Supply (DWS):** DWS comment letter dated April 7, 2022. (attached)

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. 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.

3. **State of Hawai'i Department of Health (DOH):** DOH comment letter dated Mar. 30, 2022. (attached)

### **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 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.

Richard A. & Charmaine M.B. Hellmund

April 12, 2022

Page 4

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. 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 representatives to inspect the farm upon reasonable prior notice.
8. 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.
9. 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 **April 12, 2024**, may cause the Director to initiate proceedings to invalidate the AFD.
10. 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.

Richard A. & Charmaine M.B. Hellmund

April 12, 2022

Page 5

- 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.**

Please feel free to contact Terri L. Napeahi of this office at (808) 961-8288, ext. 8160, or via email [terri.napeahi@hawaiiicounty.gov](mailto:terri.napeahi@hawaiiicounty.gov), should you have any questions and/or concerns.

Sincerely,

DocuSigned by:  
  
71C04DC68548430...  
ZENDO KERN  
Planning Director

TLN:cn

\\COH01\planning\public\Admin Permits Division\AFDA\2022\FDA-20-000481 Approval Ltr Hellmund.doc

Enclosures: DOH Comment letter dated March 30, 2022  
DWS Comment letter dated April 7, 2022  
AFDA Document  
AFDA Instruction sheet

cc w/Encl: Chief Sanitarian, DOH  
cc w/Encl: Manager-Chief Engineer, DWS

cc w/Encl: GIS Section (letter w/enclosures)  
Lisa Miura, Administrator, Real Property Tax Office (letter only)



**DEPARTMENT OF WATER SUPPLY • COUNTY OF HAWAI'I**

345 KEKŪANAŌ'A STREET, SUITE 20 • HILO, HAWAI'I 96720

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

April 7, 2022

TO: Mr. Zendo Kern, Director  
Planning Department

COH PLANNING DEPT  
APR 8 2022 PM2:05  
REC'D HAND DELIVERED

FROM: Keith K. Okamoto, Manager-Chief Engineer

**SUBJECT: Additional Farm Dwelling Agreement (PL-FDA-20-000481)**  
**Applicant – Richard A. Hellmund and Charmaine M.B. Hellmund**  
**Tax Map Key 2-8-008:044**

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.

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 (808) 961-8070, extension 255.

Sincerely yours,

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

TS:dfg

copy – Mr. Richard A. Hellmund and Ms. Charmaine M. B. Hellmund

## Mori, Ashley

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**From:** Honda, Eric T. <Eric.Honda@doh.hawaii.gov>  
**Sent:** Wednesday, March 30, 2022 2:53 PM  
**To:** Planning Internet Mail  
**Subject:** FDA-20-000481  
**Attachments:** FDA-20-000481 TMK2-8-008--044.doc

Eric Honda  
District Environmental Health Program Chief  
Hawaii District Health Office  
(808) 933-0917  
Eric.honda@doh.hawaii.gov

**DAVID Y. IGE**  
GOVERNOR OF HAWAII



**ELIZABETH A. CHAR, M.D.**  
DIRECTOR OF HEALTH

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

MEMORANDUM

DATE: March 30, 2022

TO: Mr. Zendo Kern  
Planning Director, County of Hawaii

FROM: Eric Honda  
District Environmental Health Program Chief

SUBJECT: Application: Additional Farm Dwelling Agreement FDA-20-000481  
Applicant: Richard A. Hellmund & Charmaine M.B. Hellmund  
Owner: Richard A. Hellmund & Charmaine M.B. Hellmund  
Request: One Additional Farm Dwelling Unit  
TMK: 2-8-008:044

The use of individual wastewater systems is allowed. The type and number of individual wastewater systems to be used on each lot will be determined by the wastewater rules in effect at the time of building permit application.

The applicant would need to meet the requirements of our Department of Health Air Pollution Rules, Chapter 60.1, Title 11, State of Hawaii for fugitive dust control. If there is need to discuss these requirements, please contact our Clean Air Branch staff at Ph. 933-0401.

Construction activities must comply with the provisions of Hawaii Administrative Rules, Chapter 11-46, "Community Noise Control."

1. The contractor must obtain a noise permit if the noise levels from the construction activities are expected to exceed the allowable levels of the rules.
2. Construction equipment and on-site vehicles requiring an exhaust of gas or air must be equipped with mufflers.
3. The contractor must comply with the requirements pertaining to construction activities as specified in the rules and the conditions issued with the permit.

Should there be any questions on this matter, please contact the Department of Health at 933-0917.



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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-20-000481)**

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PARTIES TO DOCUMENT:

**FIRST PARTY:**            **RICHARD A. HELLMUND**  
                                     **CHARMAINE M.B. HELLMUND**

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

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PROPERTY DESCRIPTION:

LOT 10, KAPEHU, KAUPAKUEA, KAHUA &  
MAKAHANALOA, S. HILO, Hawai'i Island

**TMK: (3) 2-8-008:044**

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ADDITIONAL FARM DWELLING AGREEMENT

THIS AGREEMENT made and executed this \_\_\_\_ day of \_\_\_\_\_, 2022, by and between **RICHARD A. HELLMUND** and **CHARMAINE M.B. HELLMUND**, herein called the "First Party," whose mailing address is P.O. BOX 831139, PEPE'EKEŌ, HAWAI'I 96783 and, the **COUNTY OF HAWAI'I**, herein called the "Second Party."

IT IS HEREBY AGREED that the First Party may construct one additional farm dwelling (note: the additional farm dwelling of this agreement is the approved second additional farm dwelling; and, in chronological and numerical order, the second additional farm dwelling is also the second single-family dwelling) located on the real property of LOT 10. The property LOT 10 is described as a portion of KAPEHU, KAUPAKUEA, KAHUA & MAKAHANALOA, S. HILO, HAWAI'I, Island of Hawai'i, containing 2.946 ACRES or 128,328 SQUARE FEET, **Tax Map Key (3) 2-8-008:044**, situated in the State Land Use AGRICULTURAL DISTRICT and zoned A-20a by the Second Party.

IT IS HEREBY ACKNOWLEDGED that the First Party FEE OWNER is the legal owner of the property described above.

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 this agreement shall run with the land and apply to a lessee or tenant of the lot or of any portion of LOT 10.

IT IS HEREBY FURTHER AGREED that should the pertinent provisions of the State and County laws, 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, for the property, LOT 10, situated within the State Land Use AGRICULTURAL DISTRICT, any land use and zoning violations that is determined by the Second Party to be caused by the First Party, a LESSEE or a TENANT, the Second Party may impose fines in violation of Hawai'i Revised Statutes section 205-4.5. 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 a first violation; for any additional violation, there shall be a fine of not more than \$5,000. The Second Party may also impose fines for any violation of Hawai'i County Code Chapter 25, as amended, according to the procedures and fine schedule of Hawai'i County Code – Zoning Code sections 25-2-30 through -2-36.

IN CONSIDERATION OF THE AFORESAID, the Second Party hereby approves this Agreement to be in conformity with Hawai'i Revised Statutes sections 205-2 and 205-4.5, consistent with the permitted uses of the State Land Use Agricultural district. This Agreement also conforms to 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:

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**RICHARD A. HELLMUND**, Landowner

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**CHARMAINE M.B. HELLMUND**, Landowner

SECOND PARTY:

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**ZENDO KERN, Planning Director**  
County of Hawai'i Planning Department

On this \_\_\_\_\_ day of \_\_\_\_\_, 2022 before me personally appeared RICHARD A. HELLMUND and CHARMAINE M.B. HELLMUND to me known to be the person described herein 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: \_\_\_\_\_

### 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.**

2. The date on page 2 will be filled in when the agreement is signed by the Planning Director; please leave it blank.
3. Enclose a check or money order in the amount of **\$41.00**, made payable to the Bureau of Conveyances, for the recordation fee. (One payment needed. Please designate who will submit)
4. 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.