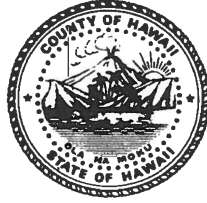


Mitchell D. Roth
Mayor

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



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

County of Hawai'i PLANNING DEPARTMENT

December 9, 2021

Troy R. Shigenaga
Alison Shigenaga
142A Malaai Road
Hilo, HI 96720

Dear Mr. and Mrs. Shigenaga:

Additional Farm Dwelling Agreement (FDA-21-000498)
Applicant(s): TROY R. SHIGENAGA AND ALISON SHIGENAGA
Owner(s): SHIGENAGA FAMILY TRUST
State Land Use: Agricultural
County Zoning: Agricultural (A-3a)
Land Area: 10.7476 acres
TMK: (3) 2-4-006:021 & 119 (COR-19-128479)

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 **two (2) additional farm dwellings ("AFD's")** on TMK: (3) 2-4-006:021 in support of the agricultural activities occurring on two adjacent parcels, TMK's: (3) 2-4-006:021 & 119. County records and the application information indicate that both parcels are owned by the Shigenaga Family Trust and incorporate agricultural activities for a family-owned nursery business named Novelty Greens LLC. Your request is **approved** subject to the following.

BACKGROUND INFORMATION

1. **Subject Property:** Lot 1110-B (par. 021) & Lot 1110-A (par. 119), Waiakea Homesteads, South Hilo, Hawai'i.
2. **Lot Size:** 10.7476 acres (par. 021) & 3.5824 acres (par. 119).
3. **State Land Use:** Agricultural (A).
4. **County Zoning:** A-3a (Agricultural, minimum 3 acre lot size).
5. **Proposed Request:** Two (2) Additional Farm Dwellings.

6. **Existing Structures:** County records and landowner's application information and site plan confirms that there is one permitted farm dwelling existing on parcel 021, which was constructed under Building Permit no. 5645, issued on October 15, 1948, and one permitted farm dwelling on parcel 119, which was constructed under Building Permit no. 840545, issued on March 28, 1984, and Building Permit no. 890425, issued on March 10, 1989. Additionally, there are numerous existing structures (greenhouses and storage sheds) located on both parcels 021 and 119, related to the existing agricultural activities occurring on the parcels.
7. **Farm Plan:** Includes the following income-producing agricultural activities.

According to the Farm Plan, there is an established nursery operation existing on parcels 021 and 119 that include the ongoing production of assorted potted landscape plants and assorted potted interior plants on approximately 10 acres of land area. Per the Farm Plan, the nursery business currently employs 20 employees and approximately 700 labor hours are required per week for the existing agricultural activities. The current vendors/market utilized by the business include landscapers, garden shops, hotels, Lowe's and Home Depot. There are currently no proposed agricultural activities identified in the Farm Plan.
8. **Evidence of Agricultural Activity:** There is evidence of existing agricultural activity, income and expenses reported with their application, and evidence of General Excise Tax License associated with the nursery business. Additionally, per comments received by the Department of Finance, Real Property Tax Office, the subject property has an approved agricultural dedication from that office.
9. **Rationale for Establishing AFD's:** According to the Farm Plan, to provide living accommodations for on-site farm workers who will assist with managing the agricultural activities associated with the existing nursery operation.

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 subdivision Lot 1110B (par. 021) & Lot 1110A (par. 119) were created by subdivision (SUB 4318) approved on June 7, 1979, 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 dwellings for agricultural or farm-related activity demonstrate that there is a plan for income-producing agricultural activity that includes both parcels 021 and 119. Per the Farm Plan, use of the dwellings will be to support the existing nursery that spans parcels 021 and 119, which is currently operating under the business name Novelty Greens LLC. Both parcels 021 and 119 are owned by the Shigenaga Family Trust.
4. In addition, the following agencies have submitted their comments as identified below:
 - a. Department of Water Supply (DWS) – Comment letter dated November 15, 2021 (Exhibit 1).
 - b. Department of Health (DOH) – Comment letter dated November 12, 2021 (Exhibit 2).
 - c. Department of Finance – Real Property Tax (RPT) – Comment email dated November 2, 2021 (Exhibit 3).

DECISION AND CONDITIONS

In view of the above, your request to construct **two (2) Additional Farm Dwellings on TMK: 2-4-006:021 is approved** subject to the following conditions:

1. The farming operation shall be commercial in nature and the AFD'S shall be used for commercial farm-related purposes and provide shelter for persons involved in the agricultural or farm-related activity occurring over and across both parcels 021 and 119. Family members who are not engaged in agricultural or farm-related activities are allowed to reside in the additional farm dwellings.
2. The agreement applies to both Lot 1110-B and Lot 1110-A, further identified by TMK 2-4-006:021 and TMK 2-4-006:119, and shall run with the land and apply to all persons who may, now or in the future, use or occupy the additional farm dwellings proposed to be located on parcel 021. Should the agricultural or farm-related activity occurring on parcel 119 cease operation or cease to be part of the approved Farm Plan, then the First Party (owners and their lessees and their successors in interest) shall submit an amended Farm Plan demonstrating agricultural or farm-related activity on parcel 021 substantially equivalent to the Farm Plan approved under this AFDA.
3. An Additional Farm Dwelling Agreement 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 dwellings shall be used for farm-related purposes. **The enclosed AFD Agreement must be returned to the Planning Department with the appropriate notarized signature(s), along with a check made 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 dwellings until the AFDA document and all required attachments have been sent for recordation by the Planning Department and recorded by the Bureau of Conveyances.

4. The First Party (owners and their lessees and their successors in interest) shall comply with 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 (See Exhibit 1), Fire Department and State Department of Health (See Exhibit 2) and any other reviewing agencies/divisions listed on the Building Permit (BP) Application.

Comments received from the Department of Water Supply (Exhibit 1) for **one (1)** additional dwelling states in part:

“...Please be informed that the subject parcel is currently served by a 5/8-inch meter (Account 183-48300), which is adequate for only one (1) 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. Water can be made available from the Department’s existing 6-inch waterline within Malaai Road, 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):

<i>2nd service to the parcel</i>	<i>\$6,095.00</i>
<i>Total (subject to change)</i>	<i>\$6,095.00...</i>

These are due and payable upon completion of the installation of the required water system improvements and prior to water service being granted...”

5. Your Additional Farm Dwelling Agreement has been approved based on your existing activities as presented in your farm plan and summarized previously in this letter. **It is required that the First Party (owners and their lessees and their successors in interest) to the Agreement shall continue to carry out and maintain this farm plan for the life of the additional farm dwelling. It is recognized that the First Party (property owners and lessees) to the Agreement shall have implemented at least 75% of the proposed farm plan (if any) within three (3) year of approval of the building permit for the additional farm dwelling. "Implementing" includes the planting and ground-rooted establishment of the proposed trees in a healthy, growing state.** The Second Party (County of Hawai'i Planning Department) to the Agreement may, in its sole discretion, allow time extensions and modifications for good cause shown by the First Party.
6. The First Party (owners and their lessees and their successors in interest) shall allow the Second Party or its representative to inspect the farm from time to time upon reasonable prior notice.
7. The decision to approve the two AFD's on the parcel identified by TMK 2-4-006:021 shall be valid for a period of two (2) years from the date of this approval letter. **Therefore, the First Party is required to secure a building permit from the Department of Public Works, Building Division, for the AFD's on or before December 9, 2023.** Failure to secure a BP for these AFD's on or before **December 9, 2023**, may cause the Director to initiate proceedings to invalidate the AFD's.
8. The applicant is responsible for any State and Federal tax consequences due to the income produced from the farm activity.
9. 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).

Troy R. Shigenaga
Alison Shigenaga
December 9, 2021
Page 6 of 6

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 the Planning Department at (808) 323-4770 or email planning@hawaiicounty.gov, should you have any further questions and/or concerns.

Sincerely,



ZENDO KERN
Planning Director

MH:mh

\\coh141v\planning\Staff\Marie\Ag\AFDA\240060210000 Shigenaga\AFDA Decision 240060210000 Shigenaga.doc

Enclosures: Exhibits 1 - 3
AFDA document instruction sheet
AFDA document

cc w/Exhibits: Chief Sanitarian, State DOH
Manager-Chief Engineer, County DWS
Lisa Miura, Administrator, County RPT (via email: Lisa.Miura@hawaiicounty.gov)
GIS Section



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 15, 2021

COH PLANNING DEPT
NOV 16 2021 PM 2:03

REC'D HAND DELIVERED

TO: Mr. Zendo Kern, Director
Planning Department

FROM: Keith K. Okamoto, Manager-Chief Engineer

SUBJECT: **Additional Farm Dwelling Agreement Application (FDA 21-000498)**
Applicant – Troy R. Shigenaga and Alison Shigenaga
Tax Map Key 2-4-006:021

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 (Account 183-48300), which is adequate for only one (1) 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. Water can be made available from the Department's existing 6-inch waterline within Malaai Road, 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):

<u>2nd service to the parcel</u>	<u>\$6,095.00</u>
Total (subject to change)	\$6,095.00

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

Exhibit 1

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

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

Mr. Zendo Kern, Director
Page 2
November 15, 2021

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 'Okamoto', written in a cursive style.

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

TS:dfg

copy – Mr. Troy R. and Ms. Alison Shigenaga
DWS Customer Service (Hilo)



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

MEMORANDUM

DATE: November 12, 2021

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

FROM: Eric Honda
District Environmental Health Program Chief

SUBJECT: Additional Farm Dwelling (FDA-21-000498)
Applicant: Troy R. Shigenaga and Alison Shigenaga
Owners: Shigenaga Family Trust
SLU: Agricultural
CZ: Agricultural (A-3a)
Land Area: 10.7476 acres
TMK: 2-4-006:021 (COR-19-128479)

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

We recommend that you review all of the Standard Comments on our website: <http://hawaii.gov/health/environmental/env-planning/landuse/landuse.html>. Any comments specifically applicable to this project should be adhered to.

The same website also features a Healthy Community Design Smart Growth Checklist (Checklist) created by Built Environment Working Group (BEWG) of the Hawaii State Department of Health. The BEWG recommends that state and county planning departments, developers, planners, engineers and other interested parties apply the healthy built environment principles in the Checklist whenever they plan or review new developments or redevelopment projects. We also ask you to share this list with others to increase community awareness on healthy community design.

Hong, Marie

From: Arquitola, Shannon
Sent: Tuesday, November 2, 2021 7:59 AM
To: Hong, Marie
Cc: Jo, Keita
Subject: FW: Request for comments / FDA-21-000498 / TMK 2-4-006:021, AFDA for Shigenaga
Attachments: Agency Copy Ack Ltr & Application FDA-21-000498.pdf

Follow Up Flag: Follow up
Flag Status: Flagged

Good Morning Marie,

The subject property was approved for our Non-Dedicated Agricultural Use Program effective 2001. Per recent aerial imagery, the property is still in active use.

No further comments at this time. Please feel free to reach out if there are any questions.

Aloha,

Shannon Arquitola
Real Property Tax Appraiser IV
County of Hawaii
Department of Finance
Telephone: (808) 961-8320
Fax: (808) 961-8415
Email: shannon.arquitola@hawaiicounty.gov

From: Jo, Keita
Sent: Friday, October 29, 2021 3:50 PM
To: Arquitola, Shannon <Shannon.Arquitola@hawaiicounty.gov>
Cc: Miura, Lisa <Lisa.Miura@hawaiicounty.gov>
Subject: FW: Request for comments / FDA-21-000498 / TMK 2-4-006:021, AFDA for Shigenaga

Hi Shannon,
Passing along this request for comment to you.

Thank You,

Keita Jo

County of Hawaii
Department of Finance
Real Property Tax Division
Assistant Real Property Tax Administrator
tel: (808) 961-8992
fax: (808) 961-8415
email: Keita.Jo@hawaiicounty.gov

Exhibit 3

ADDITIONAL FARM DWELLING AGREEMENT (AFDA) 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 4). 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.

AFTER RECORDATION, RETURN BY MAIL TO:

County of Hawai'i Planning Department
101 Pauahi Street, Suite 3
Hilo, Hawai'i 96720

Total Pages: _____

TITLE OF DOCUMENT:

ADDITIONAL FARM DWELLING AGREEMENT (FDA-21-000498)

PARTIES TO DOCUMENT:

**FIRST PARTY: SHIGENAGA FAMILY TRUST,
 TROY R. SHIGENAGA & ALISON K. H. SHIGENAGA, TRUSTEES OF
 THE SHIGENAGA FAMILY TRUST**

SECOND PARTY: COUNTY OF HAWAI'I

PROPERTY DESCRIPTION:

TMK: (3) 2-4-006:021 and (3) 2-4-006:119

ADDITIONAL FARM DWELLING AGREEMENT

THIS AGREEMENT made and executed this ___ day of _____, 2021, by and between **SHIGENAGA FAMILY TRUST, TROY R. SHIGENAGA & ALISON K. H. SHIGENAGA, TRUSTEES OF THE SHIGENAGA FAMILY TRUST**, hereinafter referred to as the "First Party," whose mailing address is 142A Malaai Road, Hilo, HI 96720 and, the **COUNTY OF HAWAI'I**, whose mailing address is Planning Department, 101 Pauahi Street, Suite 3, Hilo, HI 96720, hereinafter referred to as the "Second Party."

WITNESSETH

WHEREAS, IT IS HEREBY AGREED that the First Party may construct two additional farm dwellings located on the property at **Tax Map Key (3) 2-4-006:021**, referred to herein as Lot 1110-B, being a Portion of Waiakea Homesteads, South Hilo, Hawaii, containing 10.7476 acres, situated within the State Land Use Agricultural district and zoned Agricultural (A-3a) by the Second Party.

IT IS HEREBY ACKNOWLEDGED that the First Party is the legal owner of the property described above and of the property at **Tax Map Key (3) 2-4-006:119**, referred to herein as Lot 1110-A, being a Portion of Waiakea Homesteads, South Hilo, Hawaii, containing 3.9824 acres, situated within the State Land Use Agricultural district and zoned Agricultural (A-3a) by the Second Party.

IT IS HEREBY FURTHER AGREED that this approval to construct two additional farm dwellings 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 occurring over and across Lot 1110-A and Lot 1110-B. Family members who are not engaged in agricultural or farm-related activity are allowed to reside in the farm dwelling.
2. The agreement applies to both Lot 1110-B and Lot 1110-A, further identified by TMK 2-4-006:021 and TMK 2-4-006:119, and shall run with the land and apply to all persons who may now or in the future use or occupy the additional farm dwellings.
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 1110-B and Lot 1110-A.

IT IS HEREBY FURTHER AGREED that should the pertinent provisions of the State and County laws, rules, and regulations change to authorize said farm dwellings, upon request of the First Party, its successors, heirs, personal representatives and assigns, this Agreement may be reconsidered for possible amendment and/or severance.

IT IS HEREBY FURTHER AGREED, for the property, Lot 1110-B and Lot 1110-A, 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, its successors, heirs, personal representatives, assigns, a lessee or a tenant, the Second Party may impose fines in violation of Hawaii 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 Hawaii County Code Chapter 25, as amended, according to the procedures and fine schedule of Hawaii 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.

[REMAINDER OF THIS PAGE INTENTIONALLY LEFT BLANK]

IN WITNESS WHEREOF, the parties have executed this agreement on the day and year first above written.

FIRST PARTY:

**SHIGENAGA FAMILY TRUST,
TROY R. SHIGENAGA, TRUSTEE OF THE SHIGENAGA
FAMILY TRUST**

**SHIGENAGA FAMILY TRUST,
ALISON K. H. SHIGENAGA, TRUSTEE OF THE SHIGENAGA
FAMILY TRUST**

SECOND PARTY:

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

STATE OF HAWAII)
) SS.
COUNTY OF HAWAII)

On this _____ day of _____, 2021 before me personally appeared **TROY R. SHIGENAGA & ALISON K. H. SHIGENAGA, TRUSTEES OF THE SHIGENAGA FAMILY TRUST**, 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: _____

STATE OF HAWAII)
) SS.
 COUNTY OF HAWAII)

On this ____ day of _____, 20__, before me personally appeared Zendo Kern 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 Zendo Kern 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, 2023

Document Date:	_____	No. of Pages:	_____
Notary Name:	Rachelle Ley	3rd Judicial Circuit	
Doc. Description:	_____ _____		
Notary Signature	Date		

