

Mitchell D. Roth
Mayor

Lee E. Lord
Managing Director



Zendo Kern
Director

Jeffrey W. Darrow
Deputy 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

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

May 12, 2021

Mr. John M. Chinen, Jr.
Mrs. Julia Chinen
P.O. Box 608
Pepeekeo, HI 96783-0608

Dear Mr. & Mrs. Iranon:

**SUBJECT: Application: ADDITIONAL FARM DWELLING AGREEMENT
(AFDA) (FDA-21-000499)**

Applicant-

Land Owners: JOHN M. CHINEN, Jr. & JULIA CHINEN

Location: Kulaimano Homesteads Lots, S. Hilo, Hawai'i Island

Tax Map Key: (3) 2-8-006: (parcel) 003, Lot A

Your above-referenced application request was received and a Planning Director's review has been completed. Pursuant to state law, Hawai'i Revised Statutes (HRS) section (sec.) 205-4.5 (a)(4) & (b); sec. 165-2; the Hawai'i County Zoning Code sec. 25-5-77 (c) – Additional Farm Dwellings; and county Planning Department Rule 13 – Farm Dwellings, these standards regulate Farm Dwellings and Additional Farm Dwellings in Hawai'i County.

Request: Please Withdraw Application for an Additional Farm Dwelling Agreement (AFDA). This application for one (1) AFDA has been placed on hold. The applicants are requesting to withdraw the AFDA application because the proposed second dwelling can be approved as a first FD simply by submitting a completed 'Farm Dwelling Notice' (FDN). Therefore, under the circumstances discussed below, an AFDA is not required for the requested second dwelling or what will be determined to be the first farm dwelling.

Approved for One Second Dwelling – a First FD with FDN. The completed review found parcel 3 qualifies for a first FD with a FDN, according to the following background information, findings, and determinations. See below, Second Dwelling Determination #11.

BACKGROUND INFORMATION

1. **Subject Property:** TMK: 2-8-006: 003, Lot A at location address, 28-159 Kulaimano Homestead Road, Kulaimano Homesteads, S. Hilo, Hawai'i Island. Lot size: 6.571 acres.
2. **Legal Lot of Record.** Parcel 3, Lot A, is a lot of record created and platted in 1949 by 'Plan showing Subdivision of Lot 21 of the Kulaimano Homesteads into Lot A and Lot B,' County of Hawai'i Subdivision No. 161 (approved for recordation: July 25, 1949).

Since its 1949 platting, the parcel's lot area and configuration has essentially remained in its original configuration. In 1986, a Correction Deed (October 24, 1986) revised the lot area to the current 6.571 acres from the 1949 original lot area of 6.540 acres. The correction resulted in a 0.31-acre revision (or 1,350.36 sq. ft.). These findings were confirmed by the department's Mapping Section.

Finally, department records confirm that, parcel 3, Lot A, has not been subdivided into new lots.

3. **Landowners:** John M. Chinen, Jr. and Julia Chinen, as represented by the landowner-applicants and confirmed by the online parcel information records of the County of Hawai'i RPT Division and parcel 3's County of Hawai'i Parcel History (or county Parcel History sheets).
4. **State Land Use:** Agricultural (A).
5. **County Zoning:** A-5a (Agricultural 5 acres).
6. **Application for AFDA.** The applicants submitted an application for an AFD Agreement (AFDA) in accordance with Hawai'i Revised Statutes (HRS) section (sec.) 205-4.5 (a)(4) and (b); Hawai'i County Zoning Code sec. sec. 25-5-77 (c); and Planning Department Rule 13-4 (c). Parcel 3's Agricultural State Land Use and County Zoning enabled the Chinens to apply for an AFD.

FINDINGS & DETERMINATIONS

7. **Based on the determination that Lot A was a lot of record in 1949,** Lot A may qualify to have the following dwellings in the following order.
 - a. A first dwelling: the existing 2019 first residential nonfarm 'New Single-Family Dwelling.'

Reference: Building Permits (BP)
BP #2019-00072, 'New Single-Family Dwelling' issued on
1/23/2019 (not completed); and
BP #2021-00213, 'New Detached Bedroom containing 499 sq. ft.
(with double compartment sink), issued on 2/18/2021 (not
completed).

- b. A second dwelling: is permitted as the first Farm dwelling with the FD Notice.
- c. A third dwelling: may be applied for as an Additional Farm Dwelling and approved with a recorded Agreement (or AFDA).

First Dwelling

8. **Determination:** According to HRS sec. 205-4.5 (b), for parcel 3, the existing 2019 first dwelling qualifies and is entitled to be classified as a residential non-farm single-family dwelling: therefore, it is not subject to the farm dwelling, agricultural income, and farming operation – commercial ag standards of HRS secs. 205-4.5 (a)(4) and 165-2. Generally, these state statutory standards became effective, June 4, 1976. See discussion below at Findings #10.

Additionally, on a building site in county Ag zoning, county Zoning (Z.) Code secs. 25-5-77 (b) and 25-5-72 (a)(10), permits one residential (non-farm) single-family dwelling or one farm dwelling.

9. **One Existing 2019 First Residential (nonfarm) Single-family Dwelling.** This finding confirms that only one existing residential dwelling is located on Lot A. Although construction is not completed, it is determined to be the first dwelling (reference BP #2019-00072). The Chinens, the landowner-applicants, occupy the first dwelling.
10. **The 2021 First Dwelling entitled to Residential Nonfarm Status** consistent with and according to HRS sec. 205-4.5 (b). On lots existing before June 4, 1976, this state law permits residential nonfarm dwellings.

Because Lot A was determined to be a lot of record in 1949, it existed prior to the implementation of State Law (June 4, 1976) and therefore, is considered a residential nonfarm dwelling.

(Please note: FD standards require an evaluation of either an existing farm or ag income; and, farming operation commercial agriculture, according to HRS sections (secs.) 205-4.5 (a)(4) and 165-2. These state laws preempt the respective Hawaii County Code or rule. Haw. Constitution Article VIII , secs. 2 and 6; and HRS sec. 46-1.5 (13)).

Second Dwelling

11. **The Proposed Second Dwelling qualifies for and will establish the First FD with the FDN.** The first FD is documented with the completion and signature of the FDN. Zoning Code sec. 25-5-77 (b) and Planning Department Rule 13-4 (a).

Third Dwelling

12. **The Chinen's Application for an AFD Agreement.** Based on the above determination, the current AFDA application for a second dwelling has been placed on hold. The Planning Department requests the applicant withdraw the application since it is unnecessary for the second dwelling. Withdrawal can be accomplished via email message.

Please note: if a third dwelling is desired, an approved AFDA would be required. Please submit an application with the appropriate information/documentation necessary for a third dwelling or what would be considered the AFD.

13. **Two Examples of pre 1976 Lots and Approved Dwellings:**

The first example is TMK: 2-8-012: (parcel) 14, Ngo & Nguyen (FDA-19-000470 [approved: February 2, 2021]). Parcel 14 received nonfarm and farm dwelling approval for three dwellings:

- A first dwelling: approved nonfarm single-family dwelling;
- a second dwelling: approved with a first FD Notice; and,
- a third dwelling: approved with a first AFDA.

The second example is TMK: 1-8-006: (parcel) 98 Greimann (FDA-21-000491) [approved: February 21, 2021]. Parcel 98 received nonfarm and FD approval for two dwellings:

- an existing first dwelling: 1949 residential nonfarm single-family dwelling; and,
- a second dwelling: first FD approved with FD Notice.

Instructions for Farm Dwelling Notice (FDN for first FD). Please read, complete, and sign the enclosed copy of the notice. Both landowners should sign the notice. Please mail the completed notice to the Planning Department so that it can be electronically scanned for the record.

Please note: the first FD with the FD Notice is subject to the farm dwelling standards of agricultural income, farming operation - commercial agriculture; these standard and requirements are stated on the FD Notice.

Mr. John M. Chinen, Jr.
Mrs. Julia Chinen
May 12, 2021
Page 5

Please proceed to prepare the required building plans and apply for a building permit application with the Hawai'i County Department of Public Works, Building Division, (808) 961-8331.

For any further questions or concerns on the matters discussed above, please contact staff planner, Earl Lucero at (808) 961-8160 or Earl.Lucero@hawaiicounty.gov.

Sincerely,



ZENDO KERN
Planning Director

EML/HS:tb

P:\Admin Permits Division\AFDA\2021\EARL\FDA-21-000499 ChinenApvl.doc

Enclosures: Farm Dwelling Notice

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



County of Hawai'i Planning Department

www.cohplanningdept.com · planning@co.hawaii.hi.us

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

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

FARM DWELLING NOTICE

To: Owners of dwellings on land in State Land Use Agricultural districts.

This is to inform you that Chapter 205, Hawaii Revised Statutes, does not authorize residential dwellings as a permissible use in the State Land Use Agricultural district, unless the dwelling is related to an agricultural activity or is a "farm dwelling."

Farm dwelling is defined in Section 205-4.5(a)(4) as "a single family dwelling located on and used in conjunction 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."

Penalty for violation of Section 205-4.5, Hawaii Revised Statutes, is a fine of not more than \$5,000. If any person who is cited for a violation of the law fails to remove the violation within six months of such citation and the violation continues, such person is subject to a citation for a new and separate violation. There shall be a fine of not more than \$5,000 for any additional violation.

I acknowledge that I have read the above
and have been given a copy.

Witness's Name (please print)

Land Owner's Name (please print)

Signature of Witness

Land Owner's Signature

Date: _____

Tax Map Key: _____

*P:\Forms & References\E-Forms\2014 Updated Forms\First Farm Dwelling Notice.doc
Revised 2/18/14*