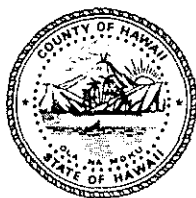


Harry Kim  
Mayor



Christopher J. Yuen  
Director

Roy R. Takemoto  
Deputy Director

## County of Hawaii

### PLANNING DEPARTMENT

25 Aupuni Street, Room 109 • Hilo, Hawaii 96720-4252  
(808) 961-8288 • Fax (808) 961-8742

April 11, 2001

Mr. Donald Sanders  
75-5475 Mamalahoa Hwy.  
Holualoa, Hawaii 96725

Dear Mr. Sanders:

#### **Additional Farm Dwelling Agreement**

**Applicant: Donald Sanders**

**Land Owner: Donald Sanders**

**Tax Map Key: (3) 7-5-013:025**

Pursuant to authority conferred to the Planning Director by Chapter 25, Article 5, Division 7, Section 25-5-77 of the Zoning Code and Planning Department Rule 13, Farm Dwellings, we have reviewed your request for an additional farm dwelling on the subject property, including the additional information submitted with your General Petition for Appeal of Decisions by Planning Director that was submitted on January 5, 2001. Your submittals included the following information:

1. A notarized affidavit that the additional dwelling shall be used for farm-related purposes in the form of the proposed Additional Farm Dwelling Agreement.
2. Name and address of the landowner or lessee, if the latter has a lease on the building site with a term exceeding one year from the date of the farm dwelling agreement.
3. Written authorization of the landowner if the lessee filed the request.
4. A farm plan or evidence of the applicant's continual agricultural productivity or farming operation within the County, including an explanation of why this additional farm dwelling is needed in connection with the agricultural productivity or farming operation. Your farm plan included the following ongoing and proposed agricultural activities:

EXHIBIT A

Mr. Donald Sanders

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April 11, 2001

- (a) Four (4) existing and twelve (12) additional citrus trees of mixed variety;
  - (b) Approximately 2,000-sq. ft. cut flower (Heliconia) and potted palm garden for commercial production;
  - (c) Three (3) existing mature avocado trees;
  - (d) Expansion of domestic goat herd to include at least ten (10) females for commercial breeding;
  - (e) Planting of approximately five hundred (500) coffee trees for commercial production.
5. In support, evidence of a State of Hawaii Department of Taxation's General Excise (GE) Tax License has also been presented.

Findings:

1. In Chapter 205, Hawaii Revised Statutes, 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 Section 205-4.5, Chapter 205, HRS, 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 Farm Plan, GE Tax License (ID number 30085246), and the agreement to use the dwelling for agricultural or farm-related activity on the building site demonstrate that there is agricultural activity and that income from your agricultural activity will be taxed.
3. In addition, the following agencies have submitted their comments as stated below:
  - (a) Department of Water Supply (Memorandum dated November 16, 2000):

EXHIBIT A

Mr. Donald Sanders  
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"We have reviewed the subject application and have the following comments and conditions:

For your information, an existing 5/8-inch meter services this property and is adequate for only one dwelling at 600 gallons per day. This application is proposing an additional detached dwelling, so the installation of a separate 5/8-inch meter by the applicant is required in accordance with Department regulations. Water is available from the 8-inch waterline in Mamalahoa Highway, which fronts 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, by the Department of Water Supply, of a second 1-inch service lateral to service a 5/8-inch meter, which shall be restricted to a maximum daily flow of 600 gallons as the existing service is.
2. Installation of a backflow preventer (reduced pressure type) by a licensed contractor on the applicant's property just after the meter. The installation and assembly of the backflow preventer must be inspected and approved by the Department before the water meter can be installed. The backflow preventer shall be operated and maintained by the customer. A copy of our backflow preventer handout is being forwarded to the applicant to help them understand this requirement.
3. Remittance of the following charges, which are subject to change, to our Customer Service Section:

a. Facilities Charge (One 2 <sup>nd</sup> service at \$3,375.00 each)	\$3,375.00
b. Capital Assessment Fee (One 2 <sup>nd</sup> service in N. Kona water system at \$500.00 each)	500.00
c. Service Lateral Installation Charge (Install one meter on Mamalahoa Highway, a County road)	<u>+1,200.00</u>
<b>Total (Subject to Change)</b>	<b>\$5,075.00</b>

EXHIBIT A

Mr. Donald Sanders

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Should there be any questions, please contact our Water Resources and Planning Branch at 961-8070.”

(b) Real Property Tax Office:

No comments submitted.

(c) Department of Health (Memorandum dated November 8, 2000):

“By current rules, the subject lot is located in a Critical Wastewater Disposal Area. A lot size of five (5) acres or more are required for the use of a cesspool. Only one (1) cesspool would be allowed on the lot. A septic tank system would be needed if a second wastewater disposal system is needed on this lot.”

Decision:

In view of the above, your request to construct a second farm dwelling is approved subject to the following conditions:

1. The second farm dwelling shall only be used to provide shelter for persons involved in the agricultural or farm-related activity on the building site.
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. All other applicable rules, regulations, and requirements of the Planning Department (including but not limited to the Zoning Code, Chapter 25, Department of Public Works, Department of Water Supply, Fire Department and State Department of Health and other reviewing agencies/divisions listed on the Building Permit Application.
4. Your Additional Farm Dwelling Agreement has been approved based primarily on proposed agricultural activity as summarized previously in this letter. It is required that the First Party (owners and lessees) to the Agreement shall have implemented at least 75% of the proposed farm plan within three (3) years of approval of the building permit for the additional farm dwelling. Time extensions and modifications may be allowed by the Second Party (County of Hawaii Planning Department) of the Agreement for good cause shown by First Party.

EXHIBIT A

Mr. Donald Sanders  
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5. The First Party shall allow the Second Party or its representative to inspect the farm upon reasonable prior notice.

Should you have questions or require further information, please feel free to contact Larry Brown of my staff at 961-8288.

Sincerely,



CHRISTOPHER J. YUEN  
Planning Director

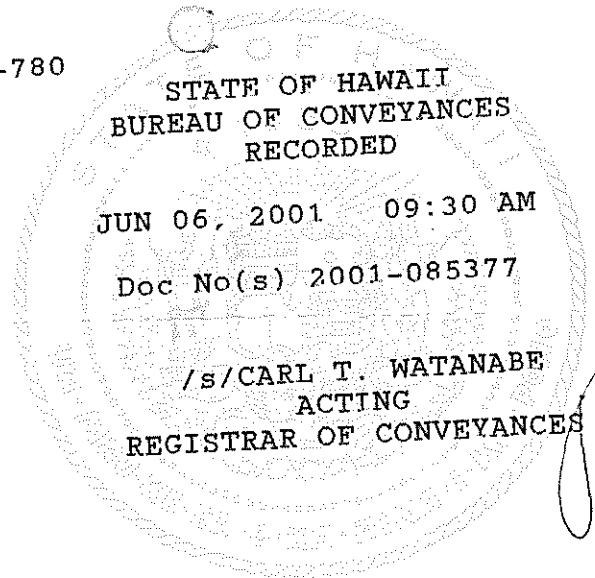
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Enclosure

xc: Mr. Milton Pavao, DWS  
Mr. Mike McCall, RPT  
Planning Department - West Hawaii Office

EXHIBIT A

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**AFTER RECORDATION, RETURN BY (X) MAIL ( ) PICK-UP**

County of Hawaii Planning Department  
25 Aupuni Street, Room 109  
Hilo, HI 96720

This document has \_\_\_ pages.

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**TITLE OF THE DOCUMENT:**

**Additional Farm Dwelling Agreement**

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**PARTIES TO DOCUMENT:**

**"FIRST PARTY":** DONALD SANDERS, Trustee under unrecorded  
Revocable Trust Agreement of Donald Sanders, dated  
September 20, 2000,

**"SECOND PARTY":** COUNTY OF HAWAII

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**PROPERTY DESCRIPTION:**

Tax Map Key (3) 7-5-013-025

ADDITIONAL FARM DWELLING AGREEMENT

**THIS AGREEMENT** made and executed this \_\_\_\_ day of \_\_\_\_\_, 2001, by and between **DONALD SANDERS, Trustee under unrecorded REVOCABLE TRUST AGREEMENT OF DONALD SANDERS, dated September 20, 2000**, whose mailing address is 75-5475 Mamalahoa Hwy., Holualoa, HI 96725, herein called the "First Party", and the **COUNTY OF HAWAII**, herein called the "Second Party".

**IT IS HEREBY AGREED** that the First Party may construct an additional farm dwelling located on the property described by **Tax Map Key (3) 7-5-013-025** situated within the State Land Use **Agricultural** district and zoned **Agricultural (A-1a)** by the Second Party.

**IT IS HEREBY ACKNOWLEDGED** that the First Part is the **legal owner** of the property above-described.

**IT IS HEREBY FURTHER AGREED** that this approval to construct an additional farm dwelling is given subject to the following conditions:

1. The additional farm dwelling shall be used to provide shelter to only person(s) involved in the agricultural or farm related activity on the property.
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 \$5,000.00 for violation of Section 205-4.5, Hawaii Revised Statutes. If the violation is not corrected within six (6) 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 \$5,000.00 for any additional violation. The Second Party may also impose fines for any violation of Chapter 25, Hawaii County Code, as amended, in accordance with the procedures and fine schedule outlined in Division 3, Article 2 of said code.

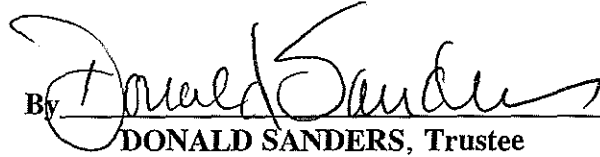
**IN CONSIDERATION OF THE AFORESAID**, the Second Party hereby approves this Agreement as being in conformity with Sections 205-2 and 205-4.5 of the Hawaii Revised Statutes, relative to permitted uses within the State Land Use Agricultural district. This Agreement is also in conformance with Chapter 25, Hawaii County Code, as amended.



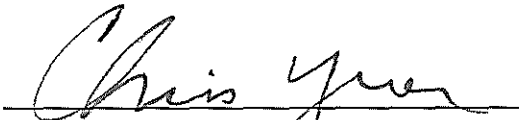
IN WITNESS WHEREOF, the parties hereto have executed this Agreement on the day and  
year first above written.

**FIRST PARTY**

**REVOCABLE TRUST AGREEMENT OF DONALD  
SANDERS, dated September 20, 2000**

By   
DONALD SANDERS, Trustee

**SECOND PARTY**

  
CHRISTOPHER J. YUEN, Planning Director  
County of Hawaii Planning Department

STATE OF HAWAII )  
 ) ss.  
COUNTY OF HAWAII )

On this 8<sup>th</sup> day of May, 2001, before me appeared **DONALD SANDERS**, to me personally known, who, being by me duly sworn or affirmed, did say that such person(s) executed the foregoing instrument as the free act and deed of such person(s), and if applicable, in the capacities shown, having been duly authorized to execute such instrument in such capacities.

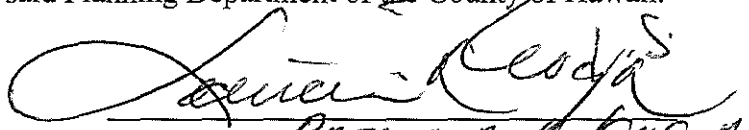


\_\_\_\_\_  
Print Name: Wallace H. Gallup, Jr.  
Notary Public, State and County Aforesaid  
My commission expires: January 9, 2004

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STATE OF HAWAII            )  
  )  
  )        SS.  
COUNTY OF HAWAII        )

On June 4, 2001, before me personally appeared **CHRISTOPHER J. YUEN**, to me personally known, who, being by me duly sworn, did say that he is the Planning Director of the County of Hawaii; and that the Planning Department of the County of Hawaii has no corporate seal; and that the instrument was signed on behalf of the Planning Department of the County of Hawaii, as a government agency, and said **CHRISTOPHER J. YUEN**, acknowledged the instrument to be the free act and deed of said Planning Department of the County of Hawaii.



Print Name: PATRICIA A. KOGA  
Notary Public, State and County Aforesaid  
My Commission expires: 7/17/02

