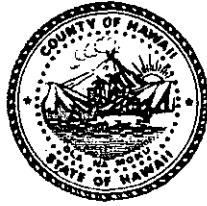


William P. Kenoi  
Mayor



Duane Kanuha  
Director

Bobby Command  
Deputy Director

West Hawai'i Office  
74-5044 Ane Keohokalole Hwy  
Kailua-Kōna, 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

January 13, 2014

Mr. Donald Randal Simpson  
Ms. Alison Joy Simpson  
P.O. Box 238  
Hakalau, Hawaii 96710

Dear Mr. Steven S.C. Lim:

**SUBJECT: Application: Additional Farm Dwelling Agreement (FDA-13-000344)**  
**Applicant: DONALD RANDAL SIMPSON and ALISON JOY SIMPSON**  
**Land Owner: DONALD RANDAL SIMPSON and ALISON JOY SIMPSON**  
**State Land Use: Agricultural**  
**County Zoning: A-10a (Agricultural, Minimum Building Site of 10 Acres)**  
**Land Area: 11.525 Acres**  
**Tax Map Key: (3) 2-9-002:032, Por. Hakalau, Hawai'i**

We have received your application for Additional Farm Dwellings along with supplemental information for review, which was deemed complete as of September 27, 2013. 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 the subject property and have **approved** your request subject to the following.

**BACKGROUND INFORMATION**

1. **Subject Property:** 29-3825 Pueo'ihi Road, Por. Hakalau, Hawai'i
2. **Lot Size:** 11.525 acres
3. **State Land Use:** Agricultural
4. **County Zoning:** A-10a (Agricultural, minimum building site of ten acres)
5. **Existing Agricultural Activity:** Pineapple patch, Banana patch, and approximately 100 Lychee/ Longan trees.

6. **Proposed Request:** One Additional Farm Dwelling.
7. Farm Plan includes the following existing and proposed income-producing agricultural activities:
  - a. Maintaining and expanding Longan tree orchard;
  - b. Maintaining and harvesting Two Banana groves;
  - c. Maintaining and harvesting Pineapple patch.
8. Estimate time required:
  - a. The farm activity will require a minimum of fifty-two (52) hours per week.
9. Supplemental Information:
  - a. Purchase receipt for Tractor and front loader dated 9/9/13;
  - b. Purchase receipt for 80 Longan trees dated 7/23/13.
10. **Rationale for Establishing AFD:** For the applicants to live in.

#### FINDINGS

1. In 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 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 subject lot was created prior to June 4, 1976, 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 or will be income-producing agricultural activity.
4. In addition, the following agencies have submitted their comments as identified below:
  - a. Department of Water Supply (DWS) has provided comments, including but not

Mr. Donald Randal Simpson  
Ms. Alison Joy Simpson  
Page 3  
January 13, 2014

limited to DWS' inability to provide water service to the proposed additional farm dwelling, although there is water service to the existing farm dwelling. There is no objection to the use of a private rainwater catchment system, subject to the applicant understanding that the existing water service shall not be shared in any way with the additional farm dwelling. (See attached copy of DWS memo dated October 28, 2013.)

- b. Department of Health (DOH) has provided comments regarding soil quality of former sugarcane lands. (See attached copy of DOH memo dated October 31, 2013.)

### 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 proposed 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, which states that the additional dwelling shall be used for farm-related purposes.
4. 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 shall be returned to the Planning Department with the appropriate notarized signatures along with a check made out to the Bureau of Conveyances in the amount of \$31.00 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.**
5. A written annual progress report shall be submitted to this department for the duration of the **three (3)** year farm plan submitted with your application. The annual progress report shall include photos, purchase receipts, sales receipts, and any additional information as requested by the Planning Director to show that the farm plan is being implemented.
6. The applicant is responsible for any State and Federal tax consequences due to the income produced from the farm activity.

Mr. Donald Randal Simpson

Ms. Alison Joy Simpson

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January 13, 2014

7. 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.
8. DWS has determined that a County approved water system is not available to support the AFD at this time. An Additional Farm Dwelling that is not served by an approved water system may be permitted to use a water catchment system in an area that receives an annual rainfall of at least eighty (80) inches of rain per year. A minimum 9,000 gallon water catchment system for domestic consumption and fire fighting purposes shall be required for the AFD.
9. 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.
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 January 13, 2016, may cause the Director to initiate proceedings to invalidate the AFD.

Please feel free to contact Jonathan Holmes of this office at (808) 961-8288 or [jholmes@hawaiicounty.gov](mailto:jholmes@hawaiicounty.gov) should you have any further questions and/or concerns.

Sincerely,



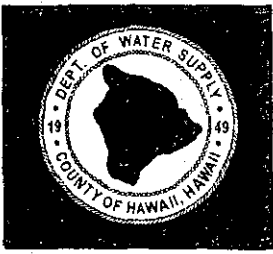
DUANE KANUHA  
Planning Director

JRH:AK:nci

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Enclosures: AFDA document  
AFDA document instruction sheet  
DWS and DOH Comment Letters

xc: Manager-Chief Engineer, DWS  
Administrator, RPT  
GIS Section (via email)



**DEPARTMENT OF WATER SUPPLY • COUNTY OF HAWAII**

345 KEKŪANAŌ'A STREET, SUITE 20 • HILO, HAWAII 96720  
TELEPHONE (808) 961-8050 • FAX (808) 961-8657

October 28, 2013

**TO:** Mr. Duane Kanuha, Director  
Planning Department

**FROM:** Quirino Antonio, Jr., Manager-Chief Engineer

**SUBJECT:** **ADDITIONAL FARM DWELLING AGREEMENT  
APPLICATION (FDA 13-000344)  
APPLICANT – DONALD RANDAL SIMPSON  
TAX MAP KEY 2-9-002:032**

2013 OCT 29 PM 4:08  
PLANNING DEPARTMENT  
HAWAII COUNTY

We have reviewed the subject application and have the following comments and conditions.

The subject parcel is not within the Department's service zone and is considered out of bounds. Where possible, parcels that are out of bounds can get one unit of water only. An existing 5/8-inch meter already services the subject property and is adequate for only one dwelling unit at an average usage of up to 400 gallons per day. Inasmuch as this application is proposing an additional dwelling, the installation of a separate 5/8-inch meter would normally be required in accordance with the Department's regulations. However, the out of bounds condition will not allow for a second meter to the parcel.

In view of the above, the Department is not in a position to support the proposed additional farm dwelling. The Department has no objection to the proposed application, subject to the applicant understanding that DWS cannot provide service to the proposed additional farm dwelling. Further, should the application be approved, both dwellings shall not share the existing meter.

Should there be any questions, please contact Mr. Lawrence Beck of our Water Resources and Planning Branch at 961-8070, extension 260.

Sincerely yours,

Quirino Antonio, Jr., P.E.  
Manager-Chief Engineer

LB:dfg

copy – Mr. Donald Randal Simpson

088294

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

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

2013 NOV -1 AM 8: 22




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

MEMORANDUM

DATE: October 31, 2013

TO: Duane Kanuha  
Planning Director, County of Hawaii

FROM: Newton Inouye   
District Environmental Health Program Chief

SUBJECT: Application: Additional Farm Dwelling Agreement (FDA-13-000344)  
Applicant: DONALD RANDAL SIMPSON and ALISON JOY SIMPSON  
Land owner: DONALD RANDAL SIMPSON and ALISON JOY SIMPSON  
State Land Use: Agricultural  
County Zoning: A-10a (Agricultural, Minimum Building Site of 10 Acres)  
Land Area: 11.525 Acres  
Tax Map Key: (3) 2-9-002:032, Por. Hakalau, Hawai'i

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.

Lands formerly used for sugarcane production are now being developed into communities where residential homes, schools and commercial businesses are being constructed. Chemicals associated with the sugarcane industry persist in soil today and may be a threat to public health and the environment. Elevated arsenic levels were discovered in soil at former sugarcane production areas on the islands. The HEER Office has identified former sugarcane production areas for assessment throughout the state and plans to work with property owners to conduct environmental assessments to identify and address elevated soil arsenic levels prior to finalizing development plans for the properties.

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.

088344

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 redevelopments projects. We also ask you to share this list with others to increase community awareness on healthy community design.

## **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 4). Photocopies of pages 4 and 5 may be made and sent to any person(s) listed 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. Enclose a check or money order in the amount of \$31.00, made out to the Bureau of Conveyance for the 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, Hawaii 96720

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TITLE OF DOCUMENT:

**ADDITIONAL FARM DWELLING AGREEMENT (FDA-13-000344)**

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PARTIES TO DOCUMENT:

**FIRST PARTY: DONALD RANDAL SIMPSON and ALISON JOY SIMPSON**

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

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PROPERTY DESCRIPTION:

**TMK: (3) 2-9-002:032**

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ADDITIONAL FARM DWELLING AGREEMENT

THIS AGREEMENT made and executed this \_\_\_ day of \_\_\_\_\_, 20\_\_\_, by and between **DONALD RANDAL SIMPSON and ALISON JOY SIMPSON**, herein called the "First Party," whose mailing address is P.O. Box 238 Hakalau, Hawai'i 96710 and the **COUNTY OF HAWAI'I**, herein called the "Second Party."

IT IS HEREBY AGREED that the First Party may construct a second and third farm dwelling located on the property described by Tax Map Key (3) 2-9-002:032, situated within the State Land Use Agricultural district and zoned Agricultural (A-10a) by the Second Party.

IT IS HEREBY ACKNOWLEDGED that the First Party is the legal owner of the property 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, Hawaii 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 Hawaii 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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**DONALD RANDAL SIMPSON**, Landowner

---

**ALISON JOY SIMPSON**, Landowner

SECOND PARTY:

---

**DUANE KANUHA**, Planning Director  
County of Hawai'i Planning Department

STATE OF \_\_\_\_\_ )  
 ) SS.  
COUNTY OF \_\_\_\_\_ )

On this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_ before me personally appeared **DONALD RANDAL SIMPSON and ALISON JOY SIMPSON**, 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 \_\_\_\_\_

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