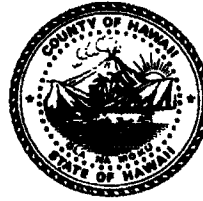


William P. Kenoi
Mayor



Duane Kanuha
Planning Director

Bobby Command
Deputy Planning Director

West Hawai'i Office
74-5044 Ane Keohokalole 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

June 8, 2015

Albert K. & Sandra S. Duarte
P.O. Box 133
Holualoa, Hawai i 96725

Dear Albert & Sandra Duarte:

Additional Farm Dwelling Agreement Application (FDA-15-000376)

Applicant: Albert K. & Sandra S. Duarte
Owner: SANDRA S. DUARTE TRUST dated June 1, 2000
and ALBERT K. DUARTE TRUST dated June 1,
2000

State Land Use: Agriculture
County Zoning: Agricultural (A-1a)
Land Area: 1.312 acres
TMK: (3) 7-6-005:017

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. Your submittals included the following information:

1. Name and address of the landowner(s) or lessee(s), if the latter has a lease on the building site with a term exceeding one year from the date of the farm dwelling agreement.
2. Written authorization of the landowner(s) if the lessee filed the request.
3. 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 proposed income-producing agricultural activities on the subject property:
 - (a) Proposed agricultural activities:
 1. Maintain, and harvest 550 Coffee trees.
 2. Nurse, plant and sell disease resistant coffee seedlings: approximately 500.
 - (b) The labor man-hours for the above existing activities are 91 hours per week.
4. Evidence of engagement in agricultural productivity in the form of a State of Hawaii Department of Taxation's General Excise (GE) Tax License has been presented.
5. The applicant's commitment to the farm plan will be shown in the form of the enclosed Additional Farm Dwelling Agreement affidavit, to be notarized and submitted for recordation

with the Bureau of Conveyances, which states that the additional dwelling shall be used for farm-related purposes.

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.** (emphases added)
2. The subject lot was created in 1944 by apportionment, which, pursuant to HRS §205-4.5(b), allows the first dwelling on the lot to be a single-family dwelling.
3. The Farm Plan, agricultural dedication, and the agreement to use the dwelling for agricultural or farm-related activity on the building site demonstrate that there is/will be income producing agricultural activity.
4. In addition, the following agencies have submitted their comments as stated below:
 - (a) Department of Water Supply(Memorandum dated May 1, 2015):

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

The Department has no objections to the proposed additional farm dwelling. Please be informed that the subject parcel does not have an existing water service with the Department. The parcel does not front upon a Department of Water Supply waterline and is, therefore, considered to be out of bounds. Parcels that are out of bounds are limited to just one unit of water. One unit of water allows for an average daily usage of 400 gallons served through a 5/8 -inch meter and is suitable for one single-family dwelling.

Based on the above information, one unit of water can be made available to the parcel, subject to the applicant signing and following the conditions of an out of bounds agreement with the Department of Water Supply (DWS) and payment of the facilities charge and the service lateral installation cost for a 5/8 -inch meter, which are shown below. Per the terms of the out of bounds agreement, the meter would need to be located adjacent to a DWS waterline and the applicant would be responsible for installing a private customer waterline from the meter to the applicant's parcel. The Applicant would also be responsible for any permits and easements required for the installation. Please note that two dwellings may not share a 5/8 -inch meter.

Please be informed, should the application be approved, both dwellings shall not share the proposed meter, and the water system plumbing between the two dwellings shall not be interconnected in any way.

Remittance of the following charges, which are subject to change, would be required.

FACILITIES CHARGE (FC):	
Initial service to the parcel	\$1,190.00
SERVICE LATERAL INSTALLATION CHARGE:	
Install one meter on Mamalahoa Hijzhway, a County road	\$3,000.00
<hr/>	
Total (Subject to Change)	\$4,190.00

Based on the proposed land use, a reduced pressure type backflow prevention assembly would have to be installed on private property within five (5) feet of any meter serving the property. The installation must be inspected and approved by the Department before water service can be activated.

Should there be any questions, please contact Mr. Troy Samura of our Water Resources and Planning Branch at 961-8070, extension 255. ”

(b) Real Property Tax Office:

No comments were received.

(c) Department of Health: (Memorandum dated May 22, 2015)

“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 Hawai‘i 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.”

Decision:

In view of the above, your request to **replace the existing approved farm plan** (approved under FDA-08-000204 and dated March 13, 2008) and construct a **second** dwelling as the (First) farm dwelling is approved subject to the following conditions:

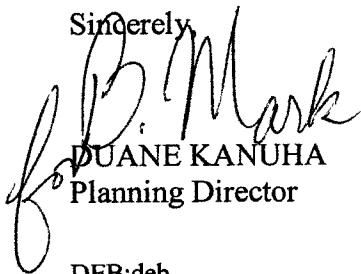
1. The additional farm dwelling shall only be used to provide shelter for persons involved in the agricultural or farm-related activity on the building site. Family members who are not engaged in agricultural or farm-related activities are allowed to reside in the farm dwelling.
2. The agreement shall run with the land and apply to all persons who may, now or in the future, use or occupy the additional farm dwelling.
3. The enclosed Additional Farm Dwelling Agreement (“AFDA”) must be returned to the Planning Department with the appropriate notarized signatures of all persons comprising the “First Party” to the agreement along with a check made out to the Bureau of Conveyances in the amount of \$31.00 in accordance with the enclosed Additional Farm Dwelling Agreement Instructions. **The Planning Department will not approve a**

building permit application for the additional dwelling until the AFDA document with all required attachments has been recorded at the Bureau of Conveyances.

4. The First Party shall comply with 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.
5. Your Additional Farm Dwelling Agreement has been approved based on your existing and proposed agricultural 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.** The Second Party (County of Hawaii Planning Department) of the Agreement may allow modifications for good cause shown by First Party. The First Party shall allow the Second Party or its representative to inspect the farm from time to time upon reasonable prior notice.
6. **The First Party is required to secure a building permit from the Department of Public Works, Building Division, for the construction of the additional farm dwelling on or before June 8, 2017.** Failure to secure a building permit for this additional farm dwelling on or before June 8, 2017 may cause the Director to initiate proceedings to invalidate the AFDA.

Should you have any questions, please contact Deanne Bugado of our West Hawaii office at 323-4770.

Sincerely,



DUANE KANUHA
Planning Director

DEB:deb

P:\afda\Kona AFDA\Approval\AFDAap-7-6-005-017_Duarte

xc: Chief Sanitarian, DOH w/application
Manager, DWS w/application
Administrator, RPT w/application
Planning Department – Kona

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 from the Bureau of Conveyances. 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. Please leave the document undated (on Page 2), as the Planning Department will date the document when it is signed by the Director.
3. Enclose a check or money order in the amount of **\$31.00**, made out to the **Bureau of Conveyances**, for the Bureau of Conveyance recordation fee.
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.

AFTER RECORDATION, RETURN BY MAIL TO:

County of Hawaii Planning Department
101 Pauahi Street, Suite 3
Hilo, Hawaii 96720

Total Pages: _____

TITLE OF DOCUMENT:

ADDITIONAL FARM DWELLING AGREEMENT

PARTIES TO DOCUMENT:

FIRST PARTY: SANDRA S. DUARTE, TRUSTEE of the SANDRA S. DUARTE TRUST dated June 1, 2000

ALBERT K. DUARTE, TRUSTEE of the ALBERT K. DUARTE TRUST dated June 1, 2000

SECOND PARTY: COUNTY OF HAWAII

PROPERTY DESCRIPTION:

TMK: (3) 7-6-005:017

ADDITIONAL FARM DWELLING AGREEMENT

THIS AGREEMENT made and executed this 25th day of June, 2015, by and between **SANDRA S. DUARTE, TRUSTEE of the SANDRA S. DUARTE TRUST dated June 1, 2000** and **ALBERT K. DUARTE, TRUSTEE of the ALBERT K. DUARTE TRUST dated June 1, 2000**, hereinafter referred to as the "First Party," whose mailing address is PO Box 1340, Kealahou, Hawai'i 96750, and the COUNTY OF HAWAI'I, hereinafter referred to as the "Second Party."

WITNESSETH

WHEREAS, IT IS HEREBY AGREED that the First Party may construct a second farm dwelling located on the property described by Tax Map Key (3) 7-6-005:017 situated within the State Land Use Agricultural district and zoned Agricultural (A-1a) (the "Property") 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 a **second** dwelling as the (First) farm dwelling is given subject to the following conditions:

1. The additional farm dwelling 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 of Hawai'i and County laws and rules and regulations change to authorize said farm dwelling, upon

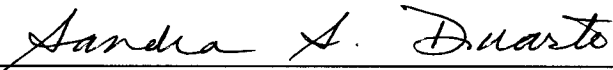
request of the First Party, its successors, heirs, personal representatives and assigns, this Agreement may be reconsidered for possible amendment and/or severance.

IT IS HEREBY FURTHER AGREED that if the property is situated within the State Land Use Agricultural district, the Second Party shall impose a fine against the First Party, its successors, heirs, personal representatives and assigns, of not more than \$5,000.00 for violation of any provision under section 205-4.5, Hawaii Revised Statutes. If the First Party fails to remove such violation within six months of such citation and the violation continues to exist, the First Party shall be 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. The Second Party may impose fines for any violation of Chapter 25, Hawaii County Code, as amended, in accordance with the procedures and fine schedule outlined in Section 25-2-35 of said code.

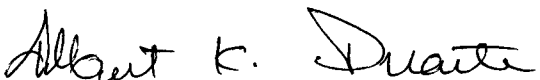
IN CONSIDERATION OF THE AFORESAID, the Second Party hereby approves this Agreement as being in conformity with Sections 205-2 and 205-4.5 of the Hawaii Revised Statutes, relative to permitted uses within the State Land Use Agricultural district. This Agreement is also in conformance with Chapter 25,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

[REMAINDER OF THIS PAGE INTENTIONALLY LEFT BLANK]

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



**SANDRA S. DUARTE, TRUSTEE of the SANDRA S.
DUARTE TRUST dated June 1, 2000, Legal Owner
FIRST PARTY**



**ALBERT K. DUARTE, TRUSTEE of the ALBERT K.
DUARTE TRUST dated June 1, 2000, Legal Owner
FIRST PARTY**

COUNTY OF HAWAII

By _____
Duane Kanuha
Its Planning Director

SECOND PARTY

STATE OF HAWAII)
) SS.
COUNTY OF HAWAII)

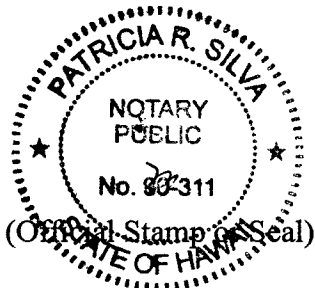
On this 25th day of June, 2015 before me personally appeared **SANDRA S. DUARTE, TRUSTEE of the SANDRA S. DUARTE TRUST dated June 1, 2000 and ALBERT K. DUARTE, TRUSTEE of the ALBERT K. DUARTE TRUST dated June 1, 2000**, to me known to be the persons described in and who executed the foregoing instrument, and acknowledged that they executed the same as their free act and deed.

Signature: Patricia R. Silva

Name: Patricia R. Silva

Notary Public, State of Hawaii

My commission expires: 6/07/2018



NOTARY CERTIFICATION STATEMENT

Document Identification or Description:
Additonal Farm Dwelling Agreement

Doc. Date: June 25, 2015

No. of Pages: 6 [including exhibits]

Jurisdiction: 3rd

Patricia R. Silva

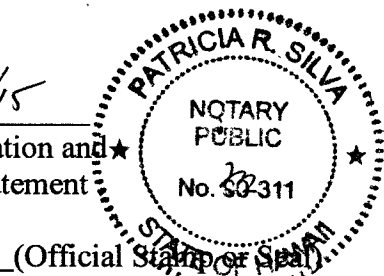
Signature of Notary

6/25/15

Date of Notarization and Certification Statement

Patricia R. Silva

Printed Name of Notary:



STATE OF HAWAI'I)
) SS.
 COUNTY OF HAWAI'I)

On this ____ day of _____ 20____, before me personally appeared Duane Kanuha, to me personally known, who, being by me duly sworn, did say that Duane Kanuha 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 Duane Kanuha 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, 2019

Document Date:	_____	No. of Pages:	_____
Notary Name:	Rachelle Ley	Third Judicial Circuit	
Doc. Description:	Additional Farm Dwelling Agreement		
	Tax Map Key (3) 7-6-005:017		
Notary Signature	Date		