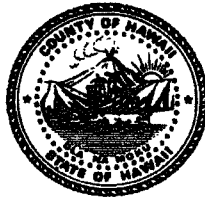


William P. Kenoi  
Mayor



Duane Kanuha  
Planning Director

Joaquin Gamiao-Kunkel  
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

March 3, 2016

Karl Toubman & Katherine Pomeroy  
P.O. Box 1556  
Kapaau, Hawai i 96755

Dear Karl and Katherine:

Additional Farm Dwelling Agreement Application (FDA-16-000391)

Applicant:	Karl Toubman & Katherine Pomeroy
Owner:	Karl Jeremy Toubman and Katherine Denise Pomeroy
State Land Use:	Agriculture
County Zoning:	Agricultural (A-20a)
Land Area:	16.125 acres
TMK:	(3) 5-4-009:024

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 existing income-producing agricultural activities on the subject property:
  - (a) Existing agricultural activities:
    1. Maintain, and harvest market gardens and orchards
    2. Care and maintain goats, sheep, and rabbits
    3. Nurse, plant and sell coconut palms.
  - (b) The labor man-hours for the above existing activities are 66 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 by subdivision (SUB-05-000245) approved on November 21, 2006, which, pursuant to HRS §205-4.5(b), requires the first dwelling on the lot to be a farm 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 income producing agricultural activity.
4. In addition, the following agencies have submitted their comments as stated below:
  - (a) Department of Water Supply(Memorandum dated January 21, 2016):

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

Please be informed that the subject parcel is serviced through an existing 1½-inch master meter. Each parcel is limited to a 5/8-inch meter or (1) unit of water, which is equal to an average of 400 gallons per day and cannot be shared between parcels. 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 Department's existing water system facilities cannot support an additional water meter at this time. Extensive improvements and additions, which may include, but not be limited to, source, storage, booster pumps, transmission, and distribution facilities, would be required. Currently, sufficient funding is not available from the Department for such improvements and no time schedule is set.

Therefore, the Department has no objections to the proposed application, subject to the applicant understanding and accepting that the Department cannot provide service to the proposed additional farm dwelling. Should the application be approved, each dwelling shall not share the existing meter, and the water system plumbing between the three dwellings shall not be interconnected in any way.

Please be informed that a reduced pressure type backflow prevention assembly was previously installed and approved by the Department.

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:

No comments were received.

**Decision:**

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

1. The additional farm dwellings 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 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.

Karl Toubman & Katherine Pomeroy

3/3/16

Page 4

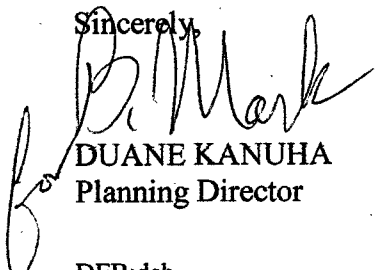
6. **The First Party is required to secure a building permit from the Department of Public Works, Building Division, for the construction of the additional farm dwelling on or before March 4, 2018.** Failure to secure a building permit for this additional farm dwelling on or before March 4, 2018 may cause the Director to initiate proceedings to invalidate the AFDA.

In reference to the Department of Water Supply's comment, we suggest the following:

1. Any dwelling not serviced by a County water system should be provided with and maintain a private potable rain-water catchment system with a minimum capacity of 6,000 gallons for domestic consumption or potable uses. This catchment system should adhere to the Department of Public Works, Building Division's "Guidelines for Owners of Rain Catchment Water Systems" as well as the State Department of Health requirements related to water testing and water purifying devices.
2. Any farm dwelling should be provided with and maintain a private water supply system with an additional minimum storage capacity of 3,000 gallons for fire fighting and other emergency purposes. The emergency water supply system, including the necessary compatible connection devices and the location of the water storage unit on the property, should meet with the approval of the Hawaii County Fire Department.

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

Sincerely,



DUANE KANUHA  
Planning Director

DEB:deb

P:\afda\Kona AFDA\Approval\AFDAap-5-4-009-024\_Toubman-Pomeroy

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

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AFTER RECORDATION, RETURN BY MAIL TO:

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

Total Pages: \_\_\_\_\_

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TITLE OF DOCUMENT:

**ADDITIONAL FARM DWELLING AGREEMENT**

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PARTIES TO DOCUMENT:

**FIRST PARTY: Karl Jeremy Toubman**

**Katherine Denise Pomeroy**

**SECOND PARTY: COUNTY OF HAWAII**

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PROPERTY DESCRIPTION:

**TMK: (3) 5-4-009:024**

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## ADDITIONAL FARM DWELLING AGREEMENT

THIS AGREEMENT made and executed this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_, by and between **Karl Jeremy Toubman and Katherine Denise Pomeroy**, hereinafter referred to as the "First Party," whose mailing address is PO Box 1556, Kapaau, Hawai'i 96755, 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) 5-4-009:024 situated within the State Land Use Agricultural district and zoned Agricultural (A-20a) (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 farm dwellings are 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 dwellings.
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.

\_\_\_\_\_  
**Karl Jeremy Toubman, Legal Owner**

**FIRST PARTY**

\_\_\_\_\_  
**Katherine Denise Pomeroy, Legal Owner**

**FIRST PARTY**

**COUNTY OF HAWAII**

By \_\_\_\_\_  
**Duane Kanuha**  
**Its Planning Director**

**SECOND PARTY**

STATE OF HAWAII                    )  
  ) SS.  
COUNTY OF HAWAII                )

On this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_ before me personally appeared **Karl Jeremy Toubman and Katherine Denise Pomeroy**, 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: \_\_\_\_\_

Name: \_\_\_\_\_

Notary Public, State of \_\_\_\_\_

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

(Official Stamp or Seal)

**NOTARY CERTIFICATION STATEMENT**

Document Identification or Description:

\_\_\_\_\_  
\_\_\_\_\_

Doc. Date: \_\_\_\_\_

No. of Pages: \_\_\_\_\_ [including exhibits]

Jurisdiction: \_\_\_\_\_

\_\_\_\_\_  
Signature of Notary

\_\_\_\_\_  
Date of Notarization and  
Certification Statement

\_\_\_\_\_  
Printed Name of Notary: \_\_\_\_\_ (Official Stamp or Seal)

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) 5-4-009:024		
Notary Signature	Date		

### **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.