



6. **Building Permits and Existing Structures:** According to records of the County of Hawaii Real Property Tax Division for TMK: 4-4-003: parcel 050, the existing first dwelling on this building site was constructed under Building Permit (BP) #: 812278 (completed: December 3, 1981); the BP was issued for one single-family dwelling, only. The applicants' submitted site plan also identifies only one existing dwelling.
7. **Subdivision No. 3803 (final approval: June 25, 1976).** On the date shown in the preceding subtitle sentence, Subdivision No. 3803 officially approved the final plat of parcel 50. This official land subdivision confirms that parcel 50 is a legal lot of record of this county. Furthermore, this official record also documents that the lot came into legal existence after June 4, 1976. Approval of this subdivision did not require any variances from water or road improvement standards.
8. **Existing Agricultural Activity:** County of Hawaii Real Property Tax records confirm parcel 50's current agricultural usage, county agricultural tax assessment, acreage in production, and the parcel's agricultural value.

The submitted Farm Plan Summary with the attached narrative on project description and related topics, the site plan, the four testimonial letters from past purchasers of head of cattle or calves from the applicants, the yearly agricultural related expense tracker statement, and a copy of the applicants' Schedule F (Form 1040) Profit or Loss from Farming 2017 – these materials document the commercial farming and agricultural income produced on the subject parcel.

9. **Proposed Request:** One additional (the second) dwelling for Farm Dwelling purposes only.
10. **Rationale for Establishing the Additional Farm Dwelling (AFD):** To provide separate housing on parcel 50 for the next generation of family members who currently live and work on the farm property.

Approval of the AFD allows a second dwelling on the subject property, to enable the landowners to maintain the level of farming operations with the continued help of family members and a growing family. Additional housing is required for their growing family that is now in their third generation and who need to live, work, and teach the next generation about farming and operating a family owned business.

11. **Farm Plan Summary and Site Plan.** The Farm Site Plan depicts an existing farm for domestic cattle (ten heads), calves, and hogs (three to five heads) with approximately 2.38 acres in farming usage. The Farm Plan Summary documents current livestock farming and the generated agricultural income as approximately \$2,000.00.

- A. **Evidence submitted for the existing farm operation for commercial agriculture.** Expenditure and investment costs for expenses spent on the farm and its livestock were documented on the 'Yearly Expense Tracker' statement form. The items ranged from feed-health-supplies-repairs and maintenance: feed, hay, water supplements and minerals, spray and scent products, de-wormer, fertilizer, weed control, farm equipment, farm gear, fence, wire, nail, and post costs.

### FINDINGS

1. In the State Land Use Agricultural district, farm dwellings are permitted and required by the State law of HRS Sec. 205-4.5 (a)(4). Furthermore, any *additional* dwelling, is required to be a farm dwelling (or an additional farm dwelling), according to Hawaii County Code, Zoning Sec. 25-5-77 (b) and (c). Residential single-family dwellings are permitted only on lots created *before* June 4, 1976, according to HRS Sec. 205-4.5(b).

According to HRS Sec. 205-4.5(a)(4), a **farm dwelling means a single family dwelling located on and used in connection with a farm or where agricultural activity provides income to the family occupying the dwelling.** (Emphasis added). The county farm dwelling definitions of Zoning Code Sec. 25-5-77(b), 25-1-5(b), and Planning Department Rule 13-3(b) are consistent with the State law definition.

2. The property is located and classified in the State Land Use Agricultural district. County Planning Department records confirm that the subject property was created after June 4, 1976 by Subdivision No. 3803 on June 25, 1976. Therefore, according to the above State law of Sections 205-4.5(b) and 205-4.5 (a)(4), and the above cited county code and rule, these laws require the first and second dwellings to be farm dwellings. The existing first dwelling is required to be a farm dwelling and an application for a second dwelling can be made for an additional farm dwelling (AFDA).

Since the first dwelling is on an agricultural lot created after June 4, 1976, the County Planning Department's 'Farm Dwelling Notice' procedure is the administrative process that satisfies the farm dwelling requirement for the first dwelling.

3. **Working Farm and Commercial Agriculture.** The documentation of expenditure and investment costs to pursue and realize the existing farm, the submitted farm plan, and the agreement to use the dwelling for farm-related agricultural activity are documentations that substantiate and demonstrate that the applicant's efforts are consistent with HRS Chapter 205, the State law that requires *a working farm or a farming operation,* as defined in HRS Sec. 165-2, the Hawaii Right to Farm Act.

In general, HRS Sec. 165-2 defines *a working farm or a farming operation* to mean "... *a commercial agricultural facility or pursuit* conducted in whole or in part including the care

and production of livestock and livestock products, ...; the planting, cultivating, harvesting, and processing of crops; ..." (emphasis added), and HRS Sec. 205-4.5(a)(4), in Findings #1, that requires the agricultural activity to provide income to the family occupying the farm dwelling.

State and county laws do not define the terms *commercial agriculture or farm and or pursuit*; however, the available general definition for *commercial farming or commercial agriculture* means a producer-farmer is farming *with the intent to sell* some or all of their agricultural production. In commercial farming, the agricultural harvest (in whatever form that takes) is for a commercial purpose: that means, the agricultural harvest *is produced with the purpose to sell it in the marketplace*.

In the context of the definition of *farming operation or working farm*, the term, *pursuit* is administratively interpreted to include efforts, investment costs, and expenditures for an agricultural purpose that *pursue, or are in pursuit* to establish or maintain a commercial farm.

Therefore, the farming enterprise is required to be a *commercial working farm or farming operation*, as stated in HRS Chapters 205 and 165, the State laws that preempt this issue.

4. **Conditions for Construction of Buildings Designed for Human Occupancy.** County of Hawaii Zoning Code Sec. 25-4-2 (a)(1) and (2), regulates conditions for construction of buildings designed for human occupancy, which includes additional farm dwellings. This Zoning Code standard requires two improvements for the additional farm dwelling.

**Approved Water Source System and Wastewater System.** Generally, these two improvement requirements must comply with standards regulated in the county building permit application process. The building permit application process requires an approved water system to provide water to the building site; the water service can be delivered from the county water system or from a private or individual delivery system. The second required improvement is a wastewater system approved by the State of Hawaii Department of Health.

### **DECISION AND CONDITIONS**

As a result of the above findings, your request to construct one (1) Additional Farm Dwelling is approved, subject to the following conditions:

1. Your AFDA (or agreement) has been approved based on the existing agricultural activity as summarized in this letter and represented on the submitted Farm Plan Summary and other application materials.
2. The First Party, identified in the Additional Farm Dwelling Agreement, shall allow the Second Party, the Hawaii County Planning Department or its representative, to inspect the farm operation upon reasonable prior notice and at a mutually agreeable date and time.

3. 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 AFDA shall be returned to the Planning Department with the appropriate notarized signature(s) along with a check made out to the Bureau of Conveyances in the amount of **\$41.00** (Regular System) in accordance with the enclosed AFDA Instructions.
4. The farming enterprise shall be commercial in nature and up to seventy-five percent (75%) of your proposed farm plan shall be implemented in three (3) years from the AFDA approval date. The Planning Department shall be allowed to inspect the farm upon reasonable prior notice.
5. The Additional Farm Dwelling shall be used for commercial 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.
6. An Additional Farm Dwelling Agreement affidavit shall be notarized and submitted to the Planning Department for recordation with the State of Hawai'i Bureau of Conveyances, which states that the additional dwelling shall be used for farm-related purposes.
7. **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.**
8. Compliance is required with all other applicable rules, regulations, and requirements of HRS Chapters 205 and 165, the County Planning Department (including but not limited to the County of Hawai'i Zoning Code Chapter 25), Department of Public Works, Department of Water Supply, Fire Department, the State of Hawaii Department of Health, and any other reviewing agencies/divisions listed on the county Building Permit application.
9. For the construction of the proposed Additional Farm Dwelling, the applicant shall comply with all standards, specifications, conditions, and requirements of the county building permit application process and the conditions for construction of buildings designed for human occupancy of the Hawaii County Zoning Code Sec. 25-4-2 (a)(1) and (2).
10. The decision to approve the Additional Farm Dwelling shall be valid for a period of two (2) years from the date of this approval letter. Therefore, there is a two year period to secure a Building Permit (BP) for the AFD. Failure to secure a BP to construct the AFD on or before the two year period expires, may be cause for the Planning Director to initiate a process to rescind and invalidate the AFD approval.

John Cummings  
Theodora Cummings  
Page 6  
November 26, 2018

Should any further questions or concerns arise, please contact staff Planner, Earl Lucero at (808) 961-8160 or email [Earl.Lucero@hawaiicounty.gov](mailto:Earl.Lucero@hawaiicounty.gov).

Sincerely,



MICHAEL YEE  
Planning Director

EML:nci

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Enclosures: AFDA document  
AFDA document instruction sheet

cc: Chief Sanitarian, DOH  
Manager-Chief Engineer, DWS

Glenn Sako, County Department of Research & Development  
[glenn.sako@hawaiicounty.gov](mailto:glenn.sako@hawaiicounty.gov)

Lisa Miura, Administrator, Real Property Tax Office  
[Lisa.Miura@hawaiicounty.gov](mailto:Lisa.Miura@hawaiicounty.gov)

cc via email: GIS Section w/enclosures

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AFTER RECORDATION, RETURN BY MAIL TO:

County of Hawai'i Planning Department  
101 Pauahi Street, Suite 3  
Hilo, Hawai'i 96720

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TITLE OF DOCUMENT:

**ADDITIONAL FARM DWELLING AGREEMENT (FDA-18-000454)**

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PARTIES TO DOCUMENT:

**FIRST PARTY:            JOHN CUMMINGS  
                                 THEODORA CUMMINGS**

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

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PROPERTY DESCRIPTION:

Being a portion of Lot 12, Grant 9473 to  
Henry A. Akana, Kalopa Homesteads,  
Kalopa, Hamakua, Hawai'i Island

**TMK: (3) 4-4-003: 050**

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## ADDITIONAL FARM DWELLING AGREEMENT

THIS AGREEMENT made and executed this \_\_\_ day of \_\_\_\_\_, 2018, by and between **JOHN CUMMINGS and THEODORA CUMMINGS**, herein called the "First Party," whose mailing address is P.O. Box6362, KAMUELA, HI 96743; and, the **COUNTY OF HAWAI'I**, herein called the "Second Party."

IT IS HEREBY AGREED that the First Party may construct one additional farm dwelling (note: For the purpose of this agreement, the additional farm dwelling of this agreement is the approved second additional farm dwelling) located on the real property of Parcel 50. The property, Parcel 50, is described as being a portion of (former) Lot 12, Grant 9473 to Henry A. Akana, Kalopa Homesteads, Kalopa, Hamakua, Hawaii Island, containing 4.033 acres, **Tax Map Key (3) 4-4-003:050**, situated in the State Land Use Agricultural district and zoned Agricultural (A-5a) by the Second Party.

IT IS HEREBY ACKNOWLEDGED that the First Party FEE OWNER is the legal owner of the property described above.

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 this agreement shall run with the land and apply to a lessee or tenant of the lot or of any portion of Parcel 50.



IT IS HEREBY FURTHER AGREED that should the pertinent provisions of the State and County laws, 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, for the property, Parcel 50, situated within the State Land Use Agricultural district, any land use and zoning violations that is determined by the Second Party to be caused by the First Party, a LESSEE or a TENANT, the Second Party may impose fines in violation of Hawaii Revised Statutes section 205-4.5. 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 a first violation; for any additional violation, there shall be a fine of not more than \$5,000. The Second Party may also impose fines for any violation of Hawaii County Code Chapter 25, as amended, according to the procedures and fine schedule of Hawaii County Code – Zoning Code sections 25-2-30 through -2-36.

IN CONSIDERATION OF THE AFORESAID, the Second Party hereby approves this Agreement to be in conformity with Hawai'i Revised Statutes sections 205-2 and 205-4.5, consistent with the permitted uses of the State Land Use Agricultural district. This Agreement also conforms to Hawai'i County Code Chapter 25, as amended.

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

FIRST PARTY:

\_\_\_\_\_  
**JOHN CUMMINGS**, Cummings Family Trust, Fee Owner-  
Landowner

\_\_\_\_\_  
**THEODORA CUMMINGS**, Cummings Family Trust, Fee Owner-  
Landowner

SECOND PARTY:

\_\_\_\_\_  
**MICHAEL YEE, Planning Director**  
County of Hawai'i Planning Department

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

On this \_\_\_\_\_ day of \_\_\_\_\_, 2018 before me personally appeared JOHN CUMMINGS, Cummings Family Trust, Fee Owner, and THEODORA CUMMINGS, Cummings Family Trust, Fee Owner, to me known to be the persons described herein and who executed the foregoing instrument, and acknowledged that he and she executed the same as their individual free act and deed.

\_\_\_\_\_  
Notary Public, State of Hawai'i

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