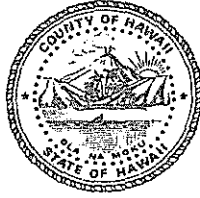


Harry Kim  
Mayor



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

October 4, 2001

Ms. Laura Burnette  
P.O. Box 921  
Captain Cook, Hawaii 96704

Dear Ms. Burnette:

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

**Applicant:** Laura Burnette  
**Land Owners:** Laura Burnette and Edith G. Brodbeck  
**Tax Map Key:** (3) 8-2-011:025

This is in response to your letter, dated August 30, 2001, in which you requested our reconsideration of your application for an Additional Farm Dwelling Agreement (AFDA) that was denied on February 28, 2001. Based on the additional information provided in the referenced letter, your telephone conversations with Deputy Director Roy Takemoto on August 14, 2001 and Larry Brown of my staff on September 26, 2001 we are reversing our denial of your original application for an AFDA.

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:

009027

Exhibit A

001 0 4 000

Ms. Laura Burnette

Page 2

October 4, 2001

1. A notarized affidavit that the additional dwelling shall be used for farm-related purposes in the form of the enclosed Additional Farm Dwelling Agreement to be submitted for recordation with the Bureau of Conveyances.
2. 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.
3. Written authorization of the landowner(s) 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:
  - (a) Ongoing agricultural activities for commercial purposes include the following:
    - i. Approximately fifty (50) coffee trees have been planted;
    - ii. Approximately fifty (50) white pineapple have been planted;
    - iii. Approximately fifteen (15) banana trees of mixed variety have been planted;
    - iv. Two (2) kiwi vines have been planted;
    - v. Ten (10) head of sheep are being pastured.
  - (b) Proposed agricultural activities include the following:
    - i. The planting of an additional 1-2 acres of coffee trees within the next two years;
    - ii. The planting of approximately twenty (20) fruit trees of mixed variety within the next two years;
    - iii. The development of a wholesale cut flower garden of approximately 40' x 20';
    - iv. Pasturing of 10-20 head of sheep.

Exhibit A

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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 (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 by subdivision (SUB 6683) approved on January 24, 1996, which, pursuant to HRS §205-4.5(b), defines the first dwelling on the lot as a farm dwelling.
3. The Farm Plan, GE Tax License (ID number 30057143), and the agreement to use the dwelling for agricultural or farm-related activity on the building site demonstrate that there will be income producing agricultural activity and the income will be taxed.
4. In addition, the following agencies have submitted their comments as stated below:
  - (a) Department of Water Supply (Letter dated January 17, 2001):

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

Our records show that this property does not have an account with the Department and therefore, does not have water service with us. The Department's nearest facility is an 8-inch waterline in Hawaii Belt Road, approximately 1,000 feet from the front of the applicant's parcel.

As this lot was created with Water Variance No. 601, the Department has no objections to the application subject to the applicant being responsible for following the conditions of the approved variance. This means that the additional farm dwelling cannot be hooked up to any existing departmental water services.

Ms. Laura Burnette  
Page 4  
October 4, 2001

Should there be any questions, please call our Water Resources and Planning Branch at 961-8665.”

(b) Real Property Tax Office:

No comments were submitted.

(c) Department of Health (Memorandum dated January 12, 2001):

“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 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. 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.

Ms. Laura Burnette  
Page 5  
October 4, 2001

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. The Second Party (County of Hawaii Planning Department) of the Agreement may allow time extensions and modifications for good cause shown by First Party.
5. The First Party shall allow the Second Party or its representative to inspect the farm upon reasonable prior notice.
6. This Additional Farm Dwelling Agreement shall be valid for a period of two (2) years from the date of this approval letter to secure a building permit for the additional farm dwelling. Failure to secure a building permit for this additional farm dwelling on or before September 27, 2003 may cause the Director to initiate proceedings to invalidate the AFDA.

In reference to the Department of Water Supply's comment, may 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.

Ms. Laura Burnette  
Page 6  
October 4, 2001

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

LMB:cps  
P:\WPWIN60\Larry\FDA\Burnett 8-2-11-25 apvl.doc

Enclosure

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

Exhibit A

R-495

STATE OF HAWAII  
BUREAU OF CONVEYANCES  
RECORDED  
DEC 26, 2001 08:02 AM  
Doc No(s) 2001-203313  
/s/CARL T. WATANABE  
ACTING  
REGISTRAR OF CONVEYANCES

*Am*  
AFTER RECORDATION, RETURN BY MAIL TO:

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

TITLE OF DOCUMENT:

**ADDITIONAL FARM DWELLING AGREEMENT**

PARTIES TO DOCUMENT:

**FIRST PARTY: LAURA BURNETTE and EDITH G. BRODBECK**

**SECOND PARTY: COUNTY OF HAWAII**

PROPERTY DESCRIPTION:

**TMK: (3) 8-2-011:025**

ADDITIONAL FARM DWELLING AGREEMENT

THIS AGREEMENT made and executed this 27<sup>th</sup> day of September, 2001, by and between LAURA BURNETTE and EDITH G. BRODBECK, herein called the "First Party," whose mailing address is P.O. Box 921, Captain Cook, Hawaii 96704, 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) 8-2-011:025 situated within the State Land Use Agricultural district and zoned Agricultural (A-5a) 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 an additional 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 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, 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 have executed this agreement on the day and year first above written.

FIRST PARTY:

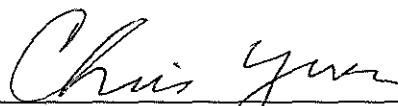


\_\_\_\_\_  
Laura Burnette, Legal Owner

\_\_\_\_\_  
~~Edith G. Brodbeck, Legal Owner~~

KV/rd


SECOND PARTY:



\_\_\_\_\_  
Christopher J. Yuen, Planning Director  
County of Hawaii Planning Department

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

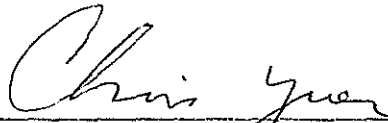
FIRST PARTY:

~~Laura Burnette, Legal Owner~~ 



Edith G. Brodbeck, Legal Owner

SECOND PARTY:



Christopher J. Yuen, Planning Director  
County of Hawaii Planning Department

STATE OF HAWAII )  
 ) SS.  
COUNTY OF HAWAII )

On this 23<sup>rd</sup> day of October, 2001 before me personally appeared LAURA BURNETTE and ~~EDITH G. BRODBECK~~ to me known to be the person ~~(s)~~ described in and who executed the foregoing instrument, and acknowledged that ~~they~~ <sup>she</sup> executed the same as ~~their~~ <sup>her</sup> free act and deed.

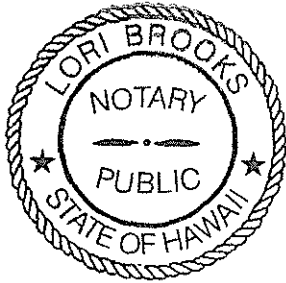
Kathleen J. Vail Kathleen J. Vail  
Notary Public, State of Hawaii

My commission expires: 6-14-2004

J.S.

STATE OF HAWAII )  
 ) SS.  
COUNTY OF HAWAII )

On this 5<sup>th</sup> day of November, 2001 before me  
personally appeared <sup>B</sup>~~LAURA BURNETTE~~ and EDITH G.  
BRODBECK to me known to be the person ~~(s)~~ described in and who executed  
the foregoing instrument, and acknowledged that <sup>She</sup>~~they~~ executed the same as <sup>her</sup>~~their~~  
free act and deed.

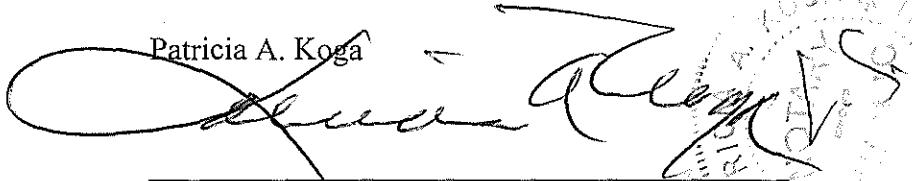


Lori Brooks  
Notary Public, State of Hawaii

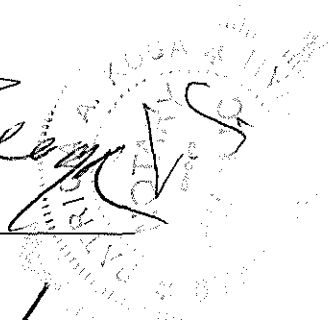
My commission expires: 8.3.2002

STATE OF HAWAII            )  
  ) SS  
COUNTY OF HAWAII        )

On this 21<sup>st</sup> day of February, 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, a government agency, and said Christopher J. Yuen acknowledged the instrument to be the free act and deed of said Planning Department, County of Hawaii.

Patricia A. Koga  


Notary Public, State of Hawaii  
Patricia A. Koga  
My commission expires: 1/17/02



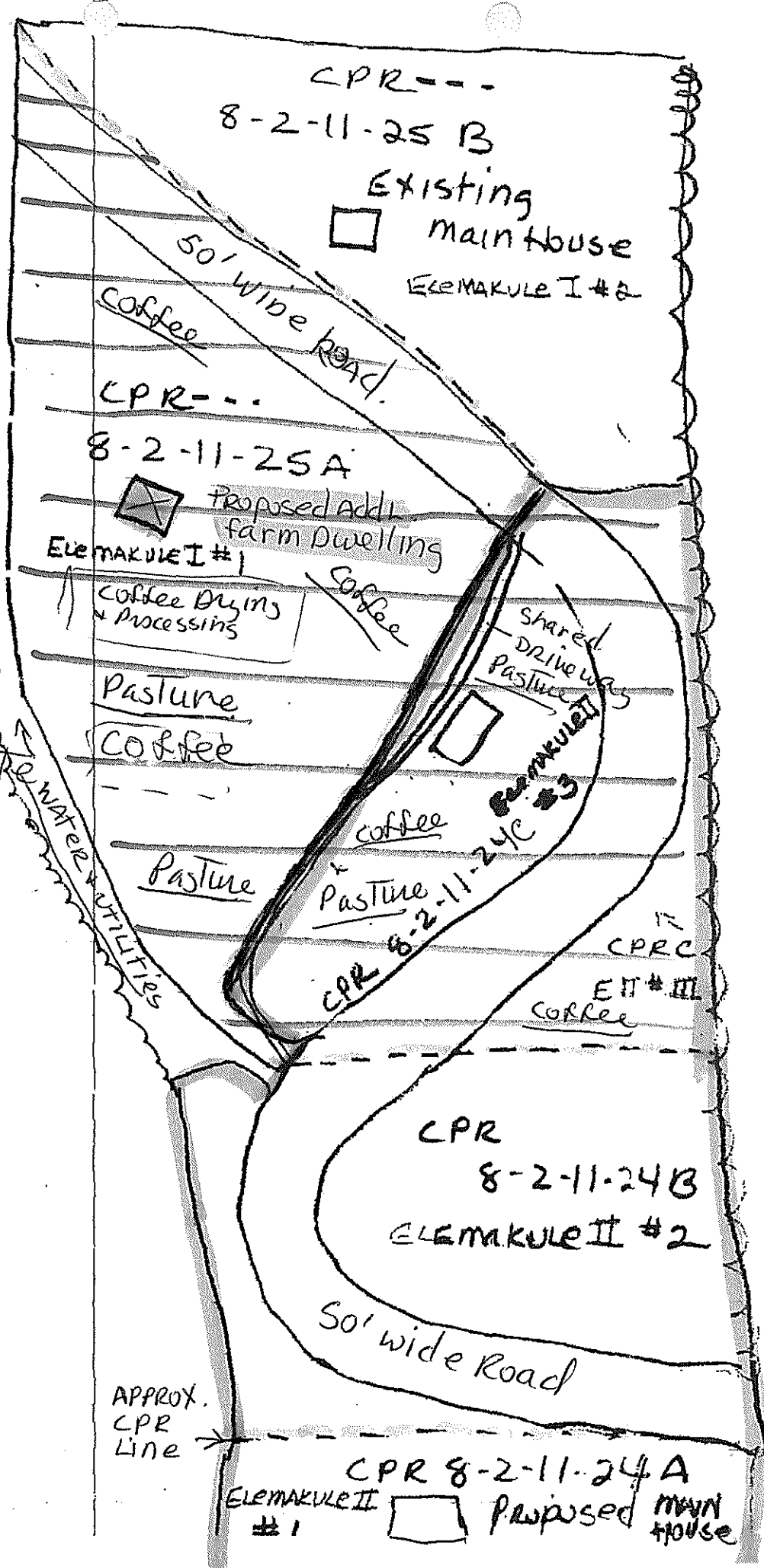
YELLOW = Tmk 8-2-11-25

--- CPR green DIVISIONS

✕ Proposed Addl. farm Dwelling pink

Orange Tmk 8-2-11-24

2 separate CPR units red stripe owned by Laura Burnet



APPROX. CPR Line

CPR 8-2-11-24A ELEMAKULE II #1 Proposed main house