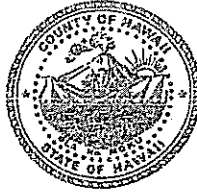


Harry Kim  
Mayor



Christopher J. Yuen  
Director

Roy R. Takemoto  
Deputy Director

## County of Hawaii

### PLANNING DEPARTMENT

101 Pauahi Street, Suite 3 • Hilo, Hawaii 96720-3043  
(808) 961-8288 • Fax (808) 961-8742

December 5, 2003

Brian K. and Heidi Healani Burke  
c/o Klaus D. Conventz  
dba Baumeister Consulting  
P.O. Box 2308  
Kailua-Kona, Hawaii 96745-2308

Dear Mr. and Mrs. Burke:

**SUBJECT: Additional Farm Dwelling Agreement**

<b>Applicants:</b>	<b>Brian K. and Heidi Healani Burke</b>
<b>Land Owners:</b>	<b>Brian K. and Heidi Healani Burke</b>
<b>State Land Use:</b>	<b>Agricultural</b>
<b>County Zoning:</b>	<b>A-3a</b>
<b>Land Area:</b>	<b>5.104-acres</b>
<b>Tax Map Key:</b>	<b>(3) 5-9-008:018</b>

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. 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.

**EXHIBIT**

A

Brian K. and Heidi Healani Burke  
c/o Klaus D. Conventz  
dba Baumeister Consulting  
Page 2  
December 5, 2003

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. The first dwelling being for your mother acting as secretary for the business and the AFD for you and your family to run the operation.

Your farm plan included the following ongoing and proposed income producing agricultural activities that are **directly related to your Landscape Contracting business** (License No. C-22925):

(a) Ongoing agricultural activities include the following:

- i. 150 palms of various varieties to be moved to the property from applicant's current residence.

(b) Proposed agricultural activities include the following:

- i. Increasing of landscape projects inventory with:
  - 100 Singapore Plumeria, potted (30 gal.)
  - 30 Hayden Mango Hybrids (15 gal.)
  - 50 Foxtail palms (inground)
  - 100 Coconut palms (inground)
  - 30 Samoan palms (inground)
  - 100 Royal palms (inground)
  - 100 Manila palms (inground)
  - 75 Standard and Dwarf Sagos (inground)
  - 100 Phoenix palms (inground)
  - 30 Ficus Benjamina (inground)
  - 75 Triangle palms (inground)
  - 300 Bougainvillea (1-5 gal.)

5. In support, evidence of a State of Hawaii Department of Taxation's General Excise (GE) Tax License has also been presented.

EXHIBIT

A

Brian K. and Heidi Healani Burke  
c/o Klause D. Conventz  
dba Baumeister Consulting  
Page 3  
December 5, 2003

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 6047) approved on July 10, 1987, which, pursuant to HRS §205-4.5(b), requires the first dwelling on the lot to be used as a farm dwelling.
3. The Farm Plan, GE Tax License (ID number 30129904), and the agreement to use the dwelling for agricultural or farm-related activity on the building site demonstrate that there is and will be income producing agricultural activity and the income is and will be taxed.
4. In addition, the following agencies have submitted their comments as stated below:

(a) Department of Water Supply (Letter dated November 6, 2003):

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

The subject parcel is in an area serviced by a private water system (Kohala Ranch). County water is not available, and the applicant is not requesting County water. As such, there are no requirements to be satisfied for this Department.

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

(b) Real Property Tax Office (Submitted Tax Clearance Form dated August 19, 2003):

“This is to certify that ... has paid all real property taxes due to the County of Hawaii up to and including 12/31/03.”

EXHIBIT

A

Brian K. and Heidi Healani Burke  
c/o Klause D. Conventz  
dba Baumeister Consulting  
Page 4  
December 5, 2003

(c) Department of Health (DOH) (Memorandum dated October 20, 2003):

“The Health Department found no environmental health concerns with regulatory implications in the submittals.”

Decision:

In view of the above, your request to construct a **second** (first AFD) 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. The enclosed Additional Farm Dwelling Agreement must 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 \$25.00 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 and all required attachments have been accepted for recordation.
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.
4. Your Additional Farm Dwelling Agreement has been approved based partially 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.

EXHIBIT

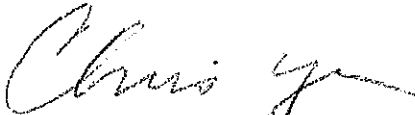
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Brian K. and Heidi Healani Burke  
c/o Klause D. Conventz  
dba Baumeister Consulting  
Page 5  
December 5, 2003

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 November 20, 2005 may cause the Director to initiate proceedings to invalidate the AFDA.

Should you have any questions, please feel free to contact Jonathan Holmes of this office at 961-8288.

Sincerely,



CHRISTOPHER J. YUEN  
Planning Director

JRH:pak  
p:\afda\afda\jrh\apv\burkeapv1.doc

Enclosure: AFDA document  
AFDA document instruction sheet

xc: Mr. Milton Pavao, DWS  
Mr. Mike McCall, RPT  
Planning Department - Kona

EXHIBIT

A

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AFTER RECORDATION, RETURN BY MAIL TO:

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

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TITLE OF DOCUMENT:

**ADDITIONAL FARM DWELLING AGREEMENT**

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PARTIES TO DOCUMENT:

**FIRST PARTY:                    BRIAN K. BURKE and HEIDI HEALANI BURKE**

**SECOND PARTY:                COUNTY OF HAWAII**

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PROPERTY DESCRIPTION:

**TMK: (3) 5-9-008:018**

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ADDITIONAL FARM DWELLING AGREEMENT

THIS AGREEMENT made and executed this 19<sup>th</sup> day of November, 2003, by and between **BRIAN K. BURKE and HEIDI HEALANI BURKE**, herein called the "First Party," whose mailing address is P.O. Box 1402, Kamuela, Hawaii 96725, and the COUNTY OF HAWAII, herein called the "Second Party."

IT IS HEREBY AGREED that the First Party may construct a second farm dwelling located on the property described by Tax Map Key (3) 5-9-008:018 situated within the State Land Use Agricultural district and zoned Agricultural (A-3a) 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 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:

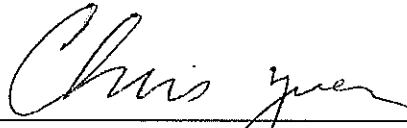


**BRIAN K. BURKE** Legal Owner



**HEIDI HEALANI BURKE**, Legal Owner

SECOND PARTY:



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

STATE OF HAWAII

)

) SS.

COUNTY OF HAWAII

)

On this 25<sup>th</sup> day of January, <sup>2004</sup>2003 before me NP/6  
 personally appeared **BRIAN K. BURKE and HEIDI HEALANI BURKE** 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.

*Elaine R. N. Yamamoto*

Notary Public, State of Hawaii  
 ELAINE R. N. YAMAMOTO

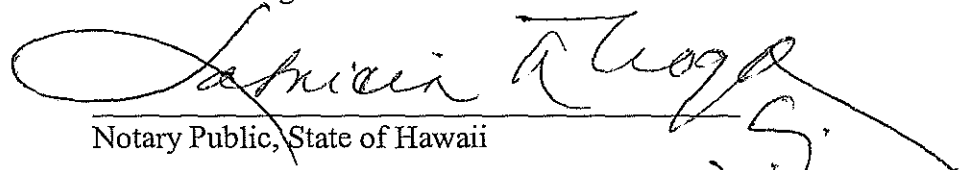
My commission expires: 11-20-2005

*CS*

STATE OF HAWAII        )  
                                  ) SS  
COUNTY OF HAWAII    )

On this 18<sup>th</sup> day of March, 2004 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

My commission expires: 07/17/06

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STATE OF HAWAII  
BUREAU OF CONVEYANCES  
RECORDED

March 4, 2014 8:02 AM  
Doc No(s) A-51760600



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B-32426208

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/s/ NICKI ANN THOMPSON  
REGISTRAR

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AFTER RECORDATION, RETURN BY MAIL TO:

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

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TITLE OF DOCUMENT:

**CANCELLATION OF AGREEMENT**

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PARTIES TO DOCUMENT:

**FIRST PARTY: JENNIFER DIANE GREGGOR**

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

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PROPERTY DESCRIPTION:

**TMK: (3) 5-9-008:018 (proposed resultant Lots 17-B-1 and 17-B-2))**

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CANCELLATION OF AGREEMENT

THIS CANCELLATION OF AGREEMENT, made and executed this <sup>JDG</sup>~~10~~ day of OCTOBER, 2013, by and between **JENNIFER DIANE GREGGOR**, herein called the "First Party," whose mailing address is 30 ARCHIBALD LANE, NOVATO, CA, 94945 and the **COUNTY OF HAWAII**, herein called the "Second Party."

WITNESSETH

WHEREAS, on December 5, 2003 an agreement was entered into by and between the predecessor in ownership of the First Party and the Second Party whereby the predecessor in ownership of the First Party was authorized to construct an additional farm dwelling (being the second dwelling) on the property described as Tax Map Key (3) 5-9-008:018; and

WHEREAS, the subject area is zoned Agricultural (A-3a) by the County of Hawai'i and classified Agricultural by the State Land Use Commission; and

WHEREAS, the agreement to construct said improvements was duly recorded with the State of Hawai'i Bureau of Conveyances as Document Number 2004-044906; and

WHEREAS, the property described as Tax Map Key (3) 5-9-008:018 (proposed resultant Lots 17-B-1 and 17-B-2) is being subdivided leaving only one dwelling on each lot; and

WHEREAS, the First Party and the Second Party agree that execution of said agreement should be cancelled as there is no longer any valid, compelling reason for it because the subdivision is resulting in only one dwelling being located on each proposed resultant Lots 17-B-1 and 17-B-2.

NOW, THEREFORE, in consideration of the above recitals and the conditions and covenants contained therein, the parties agree as follows:

The Second Party agrees that the agreement dated December 5, 2003 and on March 4, 2004, recorded at the State of Hawai'i Bureau of Conveyances as Document Number 2004-044906, between the First Party and the Second Party is no longer applicable and that the agreement is hereby declared null and void for proposed resultant Lots 17-B-1 and 17-B-2.

The Second Party agrees that the agreements dated December 5, 2003 and on March 4, 2004 recorded at the State of Hawai'i Bureau of Conveyances as Document Number 2004-044906 no longer constitute covenants or encumbrances running with the land as it relates to Tax Map Key (3) 5-9-008:018 (proposed resultant Lots 17-B-1 and 17-B-2).

The First Party agrees to pay for all of the necessary costs and expenditures to record this Cancellation of Agreement.

IT IS MUTUALLY AGREED BY AND BETWEEN the parties that if any additional documents are necessary that they will execute same in order that the agreement no longer constitutes an encumbrance on Tax Map Key (3) 5-9-008:018 (proposed resultant Lots 17-B-1 and 17-B-2).

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

FIRST PARTY:

  
\_\_\_\_\_  
JENNIFER DIANE GREGGOR  
LEGAL OWNER

SECOND PARTY:

  
\_\_\_\_\_  
DUANE KANUHA, Planning Director  
County of Hawai'i Planning Department

STATE OF HAWAII

)

) SS:

COUNTY OF HAWAII

)

On this 4th day of OCTOBER 2013, before me personally appeared **JENNIFER DIANE GREGGOR** to me known to be the person 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 ~~Hawaii~~ CALIFORNIA

PL

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

**California All-Purpose  
Acknowledgment Attached**



# CALIFORNIA ALL-PURPOSE ACKNOWLEDGMENT

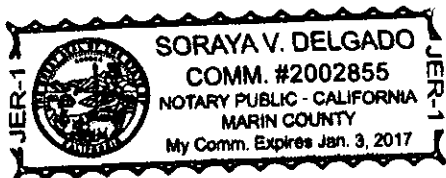
State of California  
County of Marin

On October 4, 2013 before me, Soraya V. Delgado, Notary Public

Personally appeared Jennifer Diane Greggor,

who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies); and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of California the foregoing Paragraph is true and correct.



WITNESS my hand and official seal.

Soraya V. Delgado (Seal)

My commission, Number 2002855, expires January 3, 2017

## OPTIONAL INFORMATION

### DOCUMENT

Title or Type of Document Cancellation of Agreement

Date of Document \_\_\_\_\_ Number of Pages 5pg

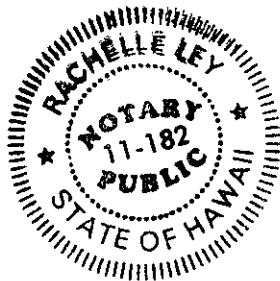
Other Signer(s) \_\_\_\_\_

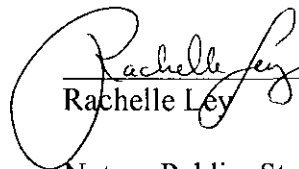
### SIGNER'S CLAIMED CAPACITY

Individual  Other \_\_\_\_\_

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

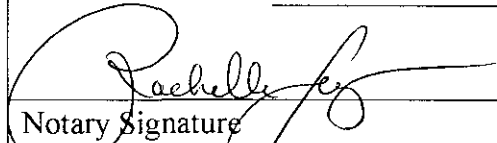
On this 12<sup>th</sup> day of February, 2014, before me personally appeared Duane Kanuha to me personally known, who, being by me duly sworn, did say that he is the Planning Director of the County of Hawai'i, and that the Planning Department of the County of Hawai'i has no corporate seal; and that the 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.

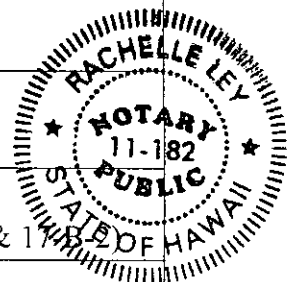


  
Rachelle Ley

Notary Public, State of Hawai'i  
Third Judicial Circuit

My Commission Expires: June 12, 2015

Document Date:	<u>October 4, 2013</u>	No. of Pages:	<u>7</u>
Notary Name:	<u>Rachelle Ley</u>	Third Judicial Circuit	
Doc. Description:	<u>Cancellation of Agreement</u>		
	<u>TMK (3) 5-9-008:018 (Proposed Resultant Lots 17-B-1 &amp; 17-B-2)</u>		
 Notary Signature		<u>2/12/2014</u> Date	



Scanned Map  
Unavailable  
Due to Size

See File

