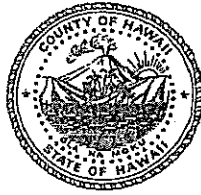


Harry Kim  
Mayor



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

August 28, 2003

Emmanuel and Marie de Casteja  
% Mr. Klaus D. Conventz  
Baumeister Consulting  
P.O. Box 2308  
Kailua-Kona, Hawaii 96745-2308

Dear Mr. and Mrs. de Casteja:

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

**Applicants:** Emmanuel De Casteja and Marie de Casteja  
**Land Owners:** Emmanuel De Casteja and Marie de Casteja  
**State Land Use:** Agricultural  
**County Zoning:** Agricultural (A-3a)  
**Land Area:** 3.025-acres  
**Tax Map Key:** (3) 6-2-005:002

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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**

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Emmanuel and Marie de Casteja  
% Mr. Klaus D. Conventz  
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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 income producing agricultural activities:

(a) Ongoing agricultural activities include the following:

- i. Present inventory includes, but is not limited to, 135 Coconut Palms, 95 assorted Fan, Bottle Queen and Royal Palms, 20 Macadamia nut trees, 10 mature Dwarf Citrus, 4 Breadfruit (Ulu) trees, 7 large Poincianas, 25 Singapore Plumeria (in ground, 50 Plumeria in 25-gallon containers, 12 large Hibiscus, 15 Seagrapes 30 Oleandere, 50 large clumps of Lily-of-the-Nile and 250 Bouganvilleas.

(b) Proposed agricultural activities include the following:

- i. Continued propagation and replenishment of the existing stock. Introduction of other stock to include 500 drought resistant Bamboo, Oleander, Pikaki and Bromeliads. The proposed inventory should be completed by June 2005, however; at least 75% of the farm plan is already in place.
5. It is noted that considerable sums of money have been invested in the 20 years that the de Castejas has owned the property, including a complete water irrigation system and the water bills to propagate the inventory.
  6. 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

EXHIBIT

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Emmanuel and Marie de Casteja  
% Mr. Klaus D. Conventz  
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**where agricultural activity provides income to the family occupying the dwelling.**  
(emphasis added)

2. The subject lot was created by subdivision 3851 with final approval on September 14, 1976, which, pursuant to HRS §205-4.5(b), requires the first dwelling on the lot to be a farm dwelling.
3. The Farm Plan, GE Tax License (ID number 30127342), and the agreement to use the dwelling for agricultural or farm-related activity on the building site demonstrate that there is be income producing agricultural activity and the income is being taxed.
4. In addition, the following agencies have submitted their comments as stated below:

(a) Department of Water Supply:

The Department of Water Supply did not comment on this application as of this date.

(b) Real Property Tax (RPT) Office (Submitted Tax Clearance):

The RPT office did not respond to this application directly.

The submitted tax clearance form states " This is to certify that Waimea Landmark Estates ... has paid all Real Property Taxes due to the County of Hawaii up to and including 6/30/23."

(c) Department of Health (Memorandum dated August 5, 2003):

"The Department of Health 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) dwelling on the subject property 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

**EXHIBIT**  
**A**

Emmanuel and Marie de Casteja  
% Mr. Klaus D. Conventz  
Baumeister Consulting  
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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 partly 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 August 21, 2005 may cause the Director to initiate proceedings to invalidate the AFDA.

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% Mr. Klaus D. Conventz  
Baumeister Consulting  
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Should you have any questions, please feel free to contact Jonathan Holmes of this office at 961-8288.

Sincerely,



CHRISTOPHER J. YUEN  
Planning Director

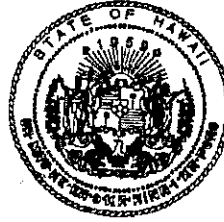
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Enclosure: AFDA document  
AFDA document instruction sheet

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

**EXHIBIT**

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R-1054 STATE OF HAWAII  
BUREAU OF CONVEYANCES  
RECORDED  
MAR 29, 2004 08:02 AM  
Doc No(s) 2004-062446



/s/ CARL T. WATANABE  
REGISTRAR OF CONVEYANCES

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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: EMMANUEL de CASTEJA and MARIE de CASTEJA**

**SECOND PARTY: COUNTY OF HAWAII**

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PROPERTY DESCRIPTION:

**TMK: (3) 6-2-005:002**

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ADDITIONAL FARM DWELLING AGREEMENT

THIS AGREEMENT made and executed this 20th day of August, 2003, by and between **EMMANUEL de CASTEJA and MARIE de CASTEJA**, herein called the "First Party," whose mailing address is P.O. Box 1081, Kamuela, Hawaii 96743, 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) 6-2-005:002 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.

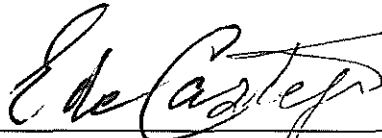
IT IS HEREBY FURTHER AGREED that if the property is situated within the State Land Use Agricultural district, the Second Party may impose a fine of not more than \$5,000 for violation of Section 205-4.5, Hawaii Revised Statutes. If the violation is not corrected within six months of such citation and 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.

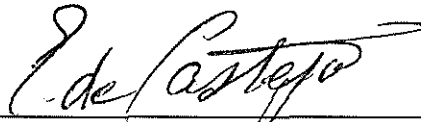


IN WITNESS WHEREOF, the parties have executed this agreement on the day and year first above written.

FIRST PARTY:



EMMANUEL de CASTEJA, Legal Owner



MARIE de CASTEJA, Legal Owner

by her attorney in fact  
Emmanuel de CASTEJA

MP/WAK

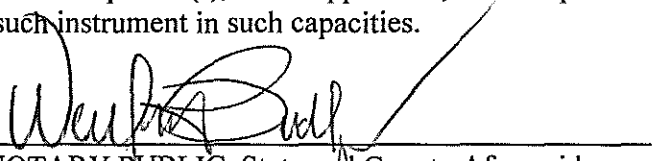
SECOND PARTY:



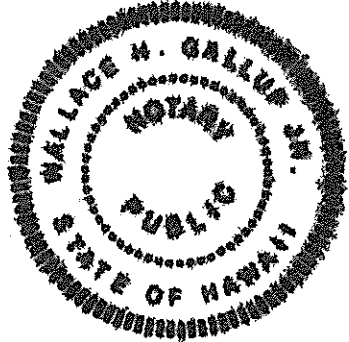
Christopher J. Yuen, Planning Director  
County of Hawaii Planning Department

STATE OF HAWAII                    )  
  )  
COUNTY OF HAWAII                )        SS.

On February 23, 2004, before me personally appeared **EMMANUEL de CASTEJA**, to me personally known, who, being by me duly sworn or affirmed, did say that such person(s) executed the foregoing instrument as the free act and deed of such person(s), and if applicable, in the capacities shown, having been duly authorized to execute such instrument in such capacities.



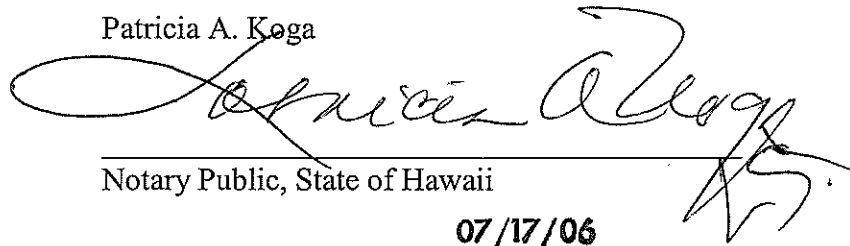
NOTARY PUBLIC, State and County Aforesaid  
Print Name: WALLACE H. GALLUP, JR.  
My commission expires: 1/9/2008



STATE OF HAWAII            )  
  ) SS  
COUNTY OF HAWAII        )

On this 18th 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

07/17/06

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

Scanned Map  
Unavailable  
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See File

