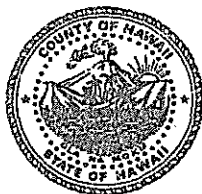


Harry Kim
Mayor



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 22, 2003

Pierce W. and Susan P. Powers
c/o Carlsmith Ball LLP
P.O. Box 1720
Kailua-Kona, Hawaii 96745-1720

Attention: Robert Triantos, Esq.

Dear Mr. Triantos:

Additional Farm Dwelling Agreement Application

Applicants:	Pierce W. Powers Jr. and Susan P. Powers
Land Owners:	Pierce W. Powers Jr. and Susan P. Powers, Dennis Alan Ree and Joanne Marie Ree
State Land Use:	Agricultural
County Zoning:	Agricultural (A-3a)
Land Area:	3.08-acres
Tax Map Key:	(3) 7-3-024:059

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.

EXHIBIT

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Pierce W. and Susan P. Powers
c/o Carlsmith Ball LLP
Attention: Robert Triantos, Esq.
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August 22, 2003

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 AFD 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. The activity is proposed.
 - (b) Proposed agricultural activities include the following:
 - i. 807 coffee trees on 1.2 acres and 60 Sharwil Avocado trees on 1.5 acres.
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 5757) approved on April 7, 1989, 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 30132262), and the agreement to use the dwelling for agricultural or farm-related activity on the building site demonstrate that

EXHIBIT

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Pierce W. and Susan P. Powers
c/o Carlsmith Ball LLP
Attention: Robert Triantos, Esq.
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August 22, 2003

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 (DWS) (Letter dated August 20, 2003):

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

An existing 5/8-inch meter services this property and is adequate for only one dwelling unit at 600 gallons per day. This application is proposing an additional detached dwelling, so the installation of a separate 5/8-inch meter by the applicant is required in accordance with Department regulations. Water is available from the 8-inch waterline in Kaloko Drive.

Therefore, the Department has no objections to the proposed application subject to the applicant understanding and accepting the following conditions:

1. Installation, by the Department of Water Supply, of a second 1-inch service lateral to service a 5/8-inch meter, which shall be restricted to a maximum flow of 600 gallons per day.
2. Installation of two backflow preventers (reduced pressure type) by a licensed contractor on the applicant's property just after the meter. The installation and of the backflow preventers must be inspected and approved by the Department before the water meter can be installed. The backflow preventers shall be operated and maintained by the customer. A copy of our backflow preventer handout is being forwarded to the applicant to help them understand this requirement.

3. Remittance of the following charges, which are subject to change, to our Customer Service Section:

• Facilities Charge (One 2 nd service at \$4,350.00 each)	\$5,500.00
• Capital Assessment Fee	500.00
• Service Lateral Installation Charge (Install one meter on Kaloko Drive, a County road)	<u>2,600.00</u>
Total (Subject to change)	\$8,600.00

EXHIBIT

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Pierce W. and Susan P. Powers
c/o Carlsmith Ball LLP
Attention: Robert Triantos, Esq.
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Should there be any questions, please call our Water Resources and Planning Branch at 961-8070”

(b) Real Property Tax Office (RPT) (Memorandum dated July 10, 2003):

“Property is receiving agricultural use value. Parcel is a two-unit CPR receiving an agricultural rate for pasture use. Real Property taxes are paid through June 30, 2003.”

(c) Department of Health (DOH):

The DOH did not submit comments to this Department.

Decision:

In view of the above, your request to construct a **second** (first AFD) dwelling on the property is approved subject to the following conditions:

1. The AFD 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 AFD 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 AFDA 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 AFDA has been approved based wholly 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

EXHIBIT

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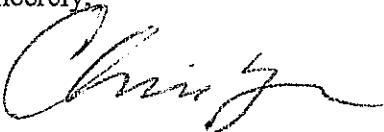
Pierce W. and Susan P. Powers
c/o Carlsmith Ball LLP
Attention: Robert Triantos, Esq.
Page 5
August 22, 2003

within three (3) years of approval of the BP 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 AFDA shall be valid for a period of two (2) years from the date of this approval letter to secure a BP for the additional farm dwelling. Failure to secure a BP for this additional farm dwelling on or before July 23, 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

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Enclosure: AFDA document
AFDA document instruction sheet

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

EXHIBIT

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R-890

STATE OF HAWAII
BUREAU OF CONVEYANCES
RECORDED
NOV 28, 2003 08:02 AM

Doc No(s) 2003-262033



/s/ CARL T. WATANABE
REGISTRAR OF CONVEYANCES

20 1/1 Z3

Jo

AFTER RECORDATION, RETURN BY MAIL TO:

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

TITLE OF DOCUMENT:

ADDITIONAL FARM DWELLING AGREEMENT

PARTIES TO DOCUMENT:

**FIRST PARTY: PIERCE WILLIAM POWERS JR., SUSAN PURCELL POWERS,
DENNIS ALAN REE and JOANNE MARIE REE**

SECOND PARTY: COUNTY OF HAWAII

PROPERTY DESCRIPTION:

TMK: (3) 7-3-024:059

ADDITIONAL FARM DWELLING AGREEMENT

THIS AGREEMENT made and executed this 1st day of August, 2003, by and between **PIERCE WILLIAM POWERS, JR., SUSAN PURCELL POWERS, DENNIS ALAN REE AND JOANNE MARIE REE**, herein called the "First Party," whose mailing addresses are 665 West Polo Drive, Saint Louis, Missouri, 63105 and 1072 Oak Circle, Wayzata, Michigan 55391, respectively, 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) 7-3-024:059 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.

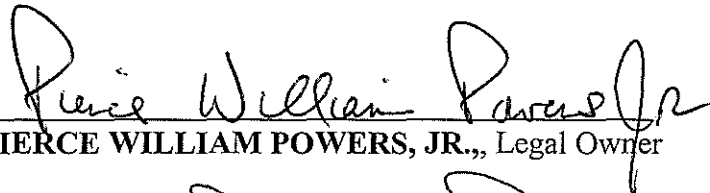
IT IS HEREBY FURTHER AGREED that should the pertinent provisions of the State and County laws and rules and regulations change to authorize said farm dwelling, upon request of the First Party, this Agreement may be reconsidered for possible amendment and/or severance.

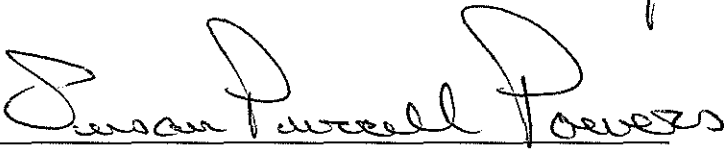
IT IS HEREBY FURTHER AGREED that if the property is situated within the State Land Use Agricultural district, the Second Party may impose a fine of not more than \$5,000 for violation of Section 205-4.5, Hawaii Revised Statutes. If the violation is not corrected within six months of such citation and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

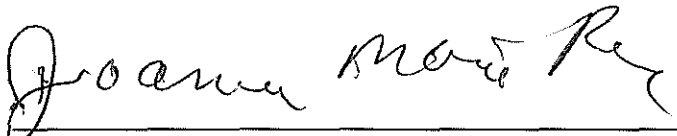
IN WITNESS WHEREOF, the parties have executed this agreement on the day and year first above written.

FIRST PARTY:

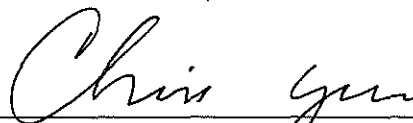

PIERCE WILLIAM POWERS, JR., Legal Owner


SUSAN PURCELL POWERS, Legal Owner


DENNIS ALAN REE, Legal Owner

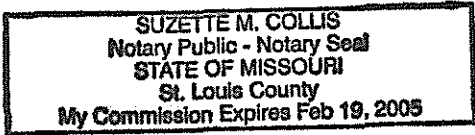

JOANNE MARIE REE, Legal Owner

SECOND PARTY:


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

STATE OF MISSOURI)
) ss.
COUNTY OF ST. LOUIS)

On this 8th day of OCTOBER, 2003, before me personally appeared **PIERCE WILLIAM POWERS, JR.**, to me personally known, who, being by me duly sworn or affirmed, did say that such person executed the foregoing instrument as the free act and deed of such person, and if applicable in the capacity shown, having been duly authorized to execute such instrument in such capacity.



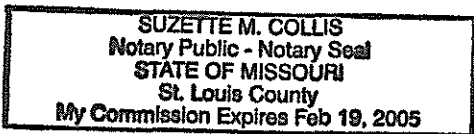
Suzette M Collis
Name: SUZETTE M COLLIS

Notary Public, State of Missouri

My commission expires: 2-19-05

STATE OF MISSOURI)
) ss.
COUNTY OF ST. LOUIS)

On this 8th day of OCTOBER, 2003, before me personally appeared **SUSAN PURCELL POWERS**, to me personally known, who, being by me duly sworn or affirmed, did say that such person executed the foregoing instrument as the free act and deed of such person, and if applicable in the capacity shown, having been duly authorized to execute such instrument in such capacity.



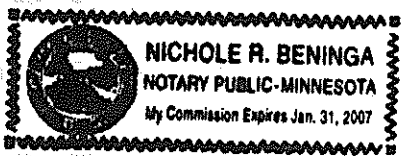
Suzette M Collis
Name: SUZETTE M COLLIS

Notary Public, State of Missouri

My commission expires: 2-19-05

STATE OF MINNESOTA)
)
COUNTY OF Hennepin) ss.

On this 10th day of October, 2003, before me personally appeared **DENNIS ALAN REE**, to me personally known, who, being by me duly sworn or affirmed, did say that such person executed the foregoing instrument as the free act and deed of such person, and if applicable in the capacity shown, having been duly authorized to execute such instrument in such capacity.



Nichole R Beninga
Name: NICHOLE R BENINGA

Notary Public, State of Minnesota

My commission expires: January 31, 2007

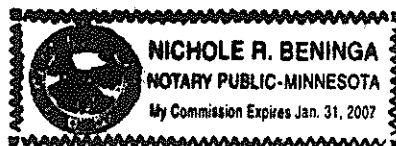
Minnesota
STATE OF MISSOURI)
)
COUNTY OF Hennepin) ss.

On this 10th day of October, 2003, before me personally appeared **JOANNE MARIE REE**, to me personally known, who, being by me duly sworn or affirmed, did say that such person executed the foregoing instrument as the free act and deed of such person, and if applicable in the capacity shown, having been duly authorized to execute such instrument in such capacity.

Nichole R Beninga
Name: NICHOLE R BENINGA

Notary Public, State of Minnesota

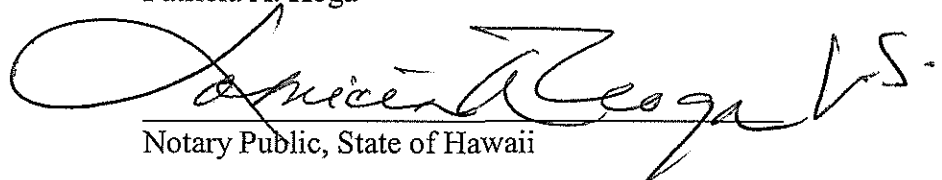
My commission expires: January 31, 2007



STATE OF HAWAII)
) SS
COUNTY OF HAWAII)

On this 7th day of November 2003 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
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Due to Size

See File

