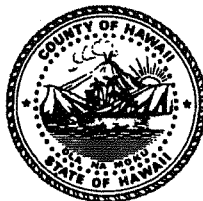


William P. Kenoi  
Mayor



BJ Leithead Todd  
Director

## County of Hawaii

### PLANNING DEPARTMENT

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

April 1, 2009

State of Hawaii  
Bureau of Conveyances  
P.O. Box 2867  
Honolulu, HI 96803

To Whom It May Concern:

**SUBJECT: Cancellation Additional Farm Dwelling Agreement  
Recordation  
Tax Map Key: (3) 8-2-008:002**

Enclosed are the original and one (1) copy of a Cancellation of Additional Farm Dwelling Agreement for the subject parcel, check # 1285 from the First Party in the amount of \$25.00 for the recordation fee, and a self-addressed stamped envelope, which are submitted for recordation.

Should you have questions, please contact Keola Childs of our West Hawaii office at (808) 327-3510.

Sincerely,

BJ Leithead Todd  
Planning Director

CKC:ckc

K:\Staff\Childs\AFDA\AFDA Corr\BOC\AFDA\boe 82008002 Buch-Vander cancel.doc

Enclosures: Original Cancellation of AFDA document w/Exhibit A  
Copy of Cancellation of AFDA document w/Exhibit A  
Check # 1285  
Self-addressed Return Envelope

APR 06 2009

---

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 ADDITIONAL FARM DWELLING AGREEMENT**

---

PARTIES TO DOCUMENT:

**FIRST PARTY:   MARC J. VANDENPLAS and JAN M. BUCHANAN**

**SECOND PARTY:   COUNTY OF HAWAI'I**

---

PROPERTY DESCRIPTION:

**TMK: (3) 8-2-008:002**

---

CANCELLATION OF ADDITIONAL FARM DWELLING AGREEMENT

THIS AGREEMENT made and executed this 2nd day of April, 2009, by and between **MARC J. VANDENPLAS and JAN M. BUCHANAN**, herein called the "First Party," whose property and mailing address is 82-5778 Napo'opo'o Road, Captain Cook, HI 96704, and the **COUNTY OF HAWAI'I**, herein called the "Second Party,"

WITNESSETH

WHEREAS, an Additional Farm Dwelling Agreement dated December 8, 2003 (hereinafter "AFD Agreement") was entered into by and between the First Party, identified therein as Marc J. Vanderplas [sic] and Jan M Buchanan, and the Second Party, whereby the First Party was authorized to construct an additional farm dwelling (being the second dwelling) on the property described as Tax Map Key (3) 8-2-008:002 (hereinafter "the Property"); and

WHEREAS, the Property is zoned Agricultural (A-1a) by the County of Hawaii and classified Agricultural by the Hawai'i State Land Use Commission; and

WHEREAS, the AFD Agreement was duly recorded with the State of Hawai'i Bureau of Conveyances on January 28, 2004 as Document No. 2004-018448; and

WHEREAS, the authorized additional farm dwelling has not yet been constructed on the Property; 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.

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 AFD Agreement is no longer applicable and that the AFD Agreement is hereby declared null and void.

The Second Party agrees that the AFD Agreement no longer constitutes a covenant or encumbrance running with the land as it relates to Tax Map Key (3) 8-2-008:002.

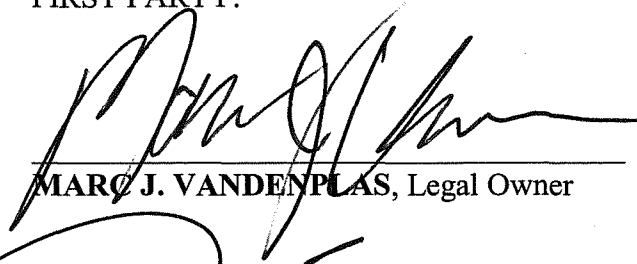
The First Party agrees to pay for all of the necessary costs and expenditures to record this Cancellation of Additional Farm Dwelling Agreement.

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 AFD Agreement no longer constitutes an encumbrance on Tax Map Key (3) 8-2-008:002.

**[THE REMAINDER OF THIS PAGE WAS INTENTIONALLY LEFT BLANK.]**

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

FIRST PARTY:

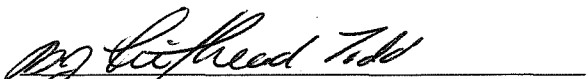


MARC J. VANDENPLAS, Legal Owner



JAN M. BUCHANAN, Legal Owner

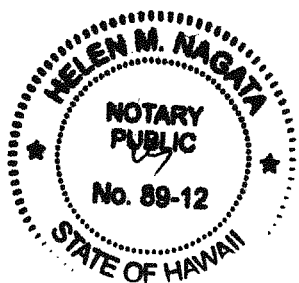
SECOND PARTY:



**BJ LEITHEAD TODD**, Planning Director  
County of Hawai'i Planning Department

STATE OF HAWAII )  
 ) SS.  
COUNTY OF HAWAII )


On this 24 day of March, 2009 before me personally appeared **MARC J. VANDENPLAS and JAN M. BUCHANAN** 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.



Helen M Nagata  
Helen M. Nagata  
Notary Public, State of Hawaii

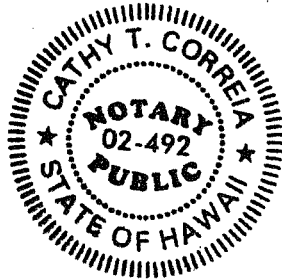
My commission expires: 01/04/2009

Document Date: <u>3/24/09</u>	# Pages: <u>6</u>
Notary Name: HELEN M. NAGATA	Third Circuit
Doc. Description: <u>Cancellation of Additional Farm Dwelling Agreement</u>	
<u>Helen M Nagata 3/24/09</u>	
Notary Signature	

A circular notary seal for Helen M. Nagata, identical to the one on the left, positioned to the right of the document description field.

STATE OF HAWAII            )  
  ) SS  
COUNTY OF HAWAII        )

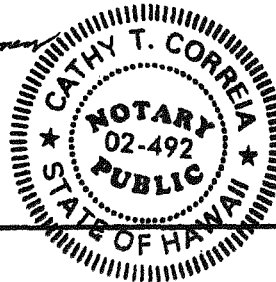
On this 2nd day of April, 2009 before me personally appeared BJ Leithead Todd, to me personally known, who, being by me duly sworn, did say that she is the Planning Director of the County of Hawaii; and that the Planning Department of the County of Hawaii has no corporate seal; and that the instrument was signed on behalf of the Planning Department of the County of Hawaii, a government agency, and said BJ Leithead Todd acknowledged the instrument to be the free act and deed of said Planning Department, County of Hawaii.



Cathy T. Correia  
CATHY T. CORREIA  
Notary Public, State of Hawaii

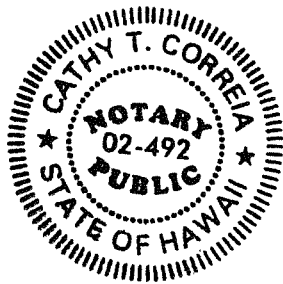
Notary Public, Third Circuit, State of Hawai'i  
My Commission expires: 10/13/2010

Doc. Date: <u>April 2, 2009</u>	# Pages: <u>6</u>
Name: <u>Cathy T. Correia</u>	<u>3rd</u> Circuit
Doc. Description: <u>Cancellation of Additional Farm Dwelling Agreement</u>	
<u>Cathy T. Correia</u> Signature	<u>4/2/09</u> Date
NOTARY CERTIFICATION	



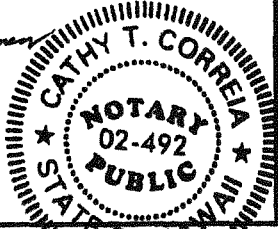
STATE OF HAWAII        )  
                                  ) SS  
COUNTY OF HAWAII    )

On this 2nd day of April, 2009 before me personally appeared BJ Leithead Todd, to me personally known, who, being by me duly sworn, did say that she 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 BJ Leithead Todd acknowledged the instrument to be the free act and deed of said Planning Department, County of Hawaii.



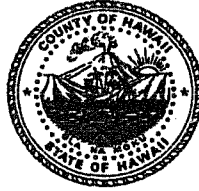
Cathy T. Correia  
CATHY T. CORREIA  
Notary Public, State of Hawaii  
  
Notary Public, Third Circuit, State of Hawai'i  
My Commission expires: 10/13/2010

Doc. Date: <u>April 2, 2009</u>	# Pages: <u>6</u>
Name: <u>Cathy T. Correia</u>	<u>3rd</u> Circuit
Doc. Description: <u>Cancellation of Additional Farm Dwelling Agreement</u>	
<u>Cathy T. Correia</u> Signature	<u>4/2/09</u> Date
NOTARY CERTIFICATION	





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

January 16, 2004

State of Hawaii  
Bureau of Conveyances  
P.O. Box 2867  
Honolulu, HI 96803

To Whom It May Concern:

**SUBJECT: Additional Farm Dwelling Agreement  
Recordation  
Tax Map Key: (3) 8-2-008:002**

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Enclosed is the original and one (1) copy of an Additional Farm Dwelling Agreement for the subject parcel, check #0507 from the First Party in the amount of \$25.00 for the recordation fee, and a self-addressed stamped envelope, which are submitted for recordation.

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

Sincerely,

A handwritten signature in cursive script, appearing to read "Chris Yuen".

CHRISTOPHER J. YUEN  
Planning Director

JRH:pak  
P:\afda\afdajrh\boc\vanderplasboc.doc

Enclosures: Original AFDA document w/Exhibit A  
Copy of AFDA document w/Exhibit A  
Check #0507  
Self-addressed and stamped return envelope

Handwritten initials "JD" and the date "01/23/04".

JAN 23 2004

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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:    MARC J. VANDERPLAS and JAN M BUCHANAN**

**SECOND PARTY: COUNTY OF HAWAII**

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PROPERTY DESCRIPTION:

**TMK: (3) 8-2-008:002**

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ADDITIONAL FARM DWELLING AGREEMENT

THIS AGREEMENT made and executed this 8<sup>th</sup> day of December, 2003, by and between **MARC J. VANDERPLAS and JAN M BUCHANAN**, herein called the "First Party," whose mailing address is 78-7054 Kamehameha III Road, Apt. 1004, Kailua-Kona, Hawaii 96740, 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) 8-2-008:002 situated within the State Land Use Agricultural district and zoned Agricultural (A-1a) 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.

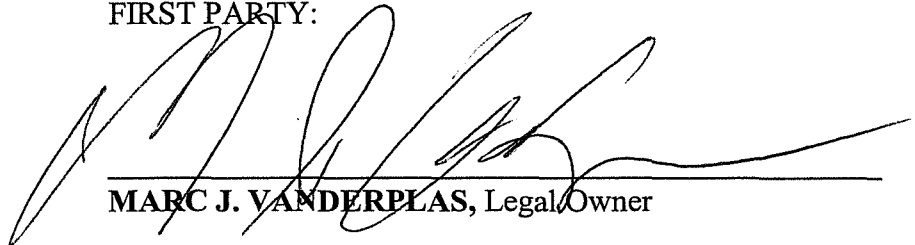
IT IS HEREBY FURTHER AGREED that should the pertinent provisions of the State and County laws and rules and regulations change to authorize said farm dwelling, upon request of the First Party, this Agreement may be reconsidered for possible amendment and/or severance.

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.

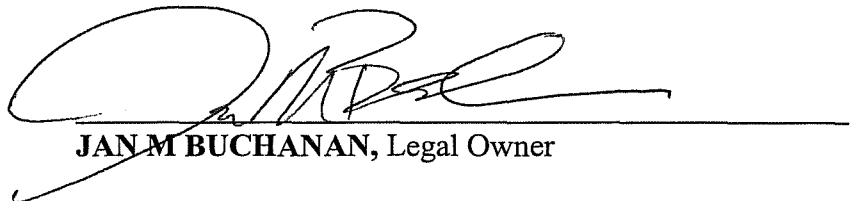
IN CONSIDERATION OF THE AFORESAID, the Second Party hereby approves this Agreement as being in conformity with Sections 205-2 and 205-4.5 of the Hawaii Revised Statutes, relative to permitted uses within the State Land Use Agricultural district. This Agreement is also in conformance with Chapter 25, Hawaii County Code, as amended.

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

FIRST PARTY:

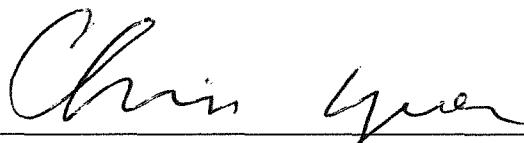


MARC J. VANDERPLAS, Legal Owner



JAN M BUCHANAN, Legal Owner

SECOND PARTY:



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

STATE OF HAWAII

)  
) SS.

COUNTY OF HAWAII

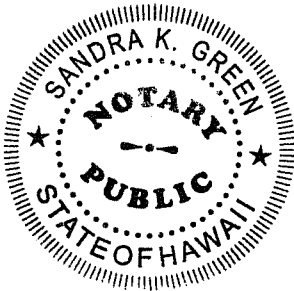
)

On this 13<sup>th</sup> day of January, 200~~8~~<sup>4</sup> before me personally appeared **MARC J. VANDERPLAS and JAN M BUCHANAN** 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.

SKG  
NP

Sandra K. Green

Notary Public, State of Hawaii



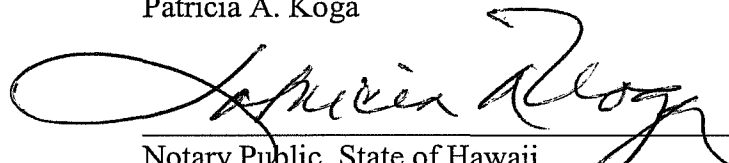
**Sandra K. Green**  
Expiration Date: May 18, 2007

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

STATE OF HAWAII            )  
  ) SS  
COUNTY OF HAWAII        )

On this 20th day of January, 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.

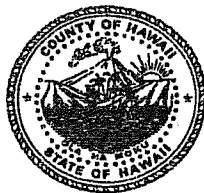
Patricia A. Koga

  
\_\_\_\_\_  
Notary Public, State of Hawaii

07/17/06

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

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 16, 2003

Marc J. Vanderplas and Jan M Buchanan  
78-7054 Kamehameha III Road, Apt. 1004  
Kailua-Kona, Hawaii 96740

Dear Mr. Vanderplas and Ms. Buchanan:

**SUBJECT: Additional Farm Dwelling Agreement**  
**Applicants: Marc J. Vanderplas and Jan M Buchanan**  
**Land Owners: Marc J. Vanderplas and Jan M Buchanan**  
**State Land Use: Agricultural**  
**County Zoning: Agricultural (A-1a)**  
**Land Area: 6.165-acres**  
**Tax Map Key: (3) 8-2-008:002**

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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.
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

**EXHIBIT**

A

DEC 17 2003



dwelling is needed in connection with the agricultural productivity or farming operation.

Your farm plan included the following proposed income producing agricultural activities:

(a) Ongoing agricultural activities include the following:

- i. ½ acre used to propagate a wide variety of endemic Hawaiian and other tropical plants for wholesale to nurseries and landscapers.

(b) Proposed agricultural activities include the following:

- i. Expansion of growing area for above activity to 1 acre, and;
- ii. The Growing of organic vegetables and fruits for sale to local produce stands and restaurants. This activity will cover approximately an additional acre of the property.

Current man-hours are 36 hours per week. Expected man-hours after expansion will be approximately 80 hours per week.

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 (5667) approved on February 18, 1988, 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 30132787), 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:

**EXHIBIT**

A

(a) Department of Water Supply (DWS):

The DWS did not comment on this application as of this date.

(b) Real Property Tax Office (RPT) (Response form dated October 10, 2003) and  
(Submitted Tax Clearance Form dated October 7, 2003):

“This memo confirms that the Kona Real Property Office received on October 9, 2003, Ag Use applications for the above mentioned TMKs. The applications received do qualify for agricultural use status. Unfortunately, our department is undertaking a major project that will take the balance of October to complete; therefore, I am hopeful to make a field inspection in November 2003 to confirm that the plantings are in place.

If you have any questions, please do not hesitate to call me. (Lloyd Tanaka/  
Appraiser)”

“This is to certify that Vanderplas, Marc has paid all Real Property Taxes due to the County of Hawaii up to and including December 31, 2003.”

(c) Department of Health (DOH):

The DOH did not comment on this application as of this date.

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

**EXHIBIT**

A

Marc J. Vanderplas and Jan M Buchanan

Page 4

December 16, 2003

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.
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 December 8, 2005 may cause the Director to initiate proceedings to invalidate the AFDA. The building permit for the first dwelling on the property shall be secured prior to or in conjunction with the AFD permit.

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:mad

P:\afda\afdajrh\apvl\vanderplasapvl.doc

**EXHIBIT**

A

Marc J. Vanderplas and Jan M Buchanan  
Page 5  
December 16, 2003

Enclosure: AFDA document  
AFDA document instruction sheet

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

**EXHIBIT**

A