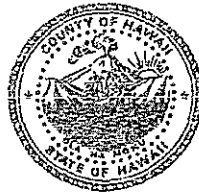


Harry Kim  
Mayor



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

February 10, 2004

Robert D. and Teresa B. Henriques  
74-4939 Mamalahoa Highway  
Holualoa, Hawaii 96725

Dear Mr. and Mrs. Henriques:

**SUBJECT: Additional Farm Dwelling Agreement**  
**Applicants: Robert D. and Teresa B. Henriques**  
**Land Owners: Robert D. and Teresa B. Henriques**  
**State Land Use: Agricultural**  
**County Zoning: Agricultural (A-1a & A-20a)**  
**Land Area: 8.64-acres**  
**Tax Map Key: (3) 7-4-006:002**

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

**EXHIBIT**

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Robert D. and Teresa B. Henriques

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February 10, 2004

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

(a) Ongoing agricultural activities include the following:

- i. Repair of the existing fencing and rock walls in anticipation of the proposed activity.

(b) Proposed agricultural activities include the following:

- i. 4 acres in coffee (approximately 4,000 trees) and pasturage of the remaining acreage.

The applicant has purchased a tractor at considerable expense in preparation of the farming activities.

5. In support, a copy of G.E. Tax license has 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 prior to June 4, 1976 (Portion of Grant 3456, which, pursuant to HRS §205-4.5(b), allows the first dwelling on the lot to be a single-family dwelling.
3. The Farm Plan, General Excise Tax License (30017971) 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.

EXHIBIT

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4. In addition, the following agencies have submitted their comments as stated below:

(a) Department of Water Supply (DWS) (Memorandum dated January 15, 2004):

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

For your information, an existing 5/8-inch meter services this property and is adequate for only one dwelling at an average of 400 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 Mamalahoa Highway. The parcel is currently covered by an Elevation Agreement as a portion of the parcel is outside of the Department’s service limits.

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

1. Submit a copy of your deed to the Department of Water Supply, Engineering Division with a note for the above application. It is needed to update your Elevation Agreement as it is in an outdated form.
2. Submit a schematic diagram prepared by a licensed engineer in the State of Hawai‘i to the Department of Water Supply for approval as the additional farm dwelling is outside of the Department’s service limits.
3. 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 daily flow of 600 gallons per day.
4. Installation of a backflow preventer (reduced pressure type) by a licensed contractor on the applicant’s property just after the meter. The installation and assembly of the backflow preventer must be inspected and approved by the Department before the water meter can be installed. The backflow preventer 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.

**EXHIBIT**

A

Robert D. and Teresa B. Henriques  
Page 4  
February 10, 2004

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

a) Facilities Charge (One 2 <sup>nd</sup> service at \$5,500.00 each)	\$5,500.00
b) Capital Assessment Fee	500.00
c) Service Lateral Installation Charge (Install one meter on Mamalahoa Highway, a County road)	<u>2,600.00</u>
Total (Subject to Change)	\$8,600.00

Should there be any questions, please call Ms. Shari Komata of our Water Resources and Planning Branch at 961-8070, extension 1.”

(b) Real Property Tax (RPT) Office (Submitted Tax Clearance Form dated September 15, 2003):

Taxes are paid through December 10, 2003.

(c) Department of Health (Memorandum dated January 5, 2004):

“The proposed project is located within 1000 feet of a public drinking water source. One individual wastewater system will be allowed to be used for the project and must either contain an aerobic unit with disinfection or a non-discharge disposal system.”

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 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**

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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. In response to your letter regarding the use of a catchment water supply system in lieu of the requirement of the Department of Water Supply to install a second water meter, we have the following to offer:
  - a. Any dwelling not serviced by a County water system should be provided with and maintain a private potable water catchment system which includes a minimum 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.
  - b. Any farm dwelling should be provided with and maintain a private water supply system which includes an additional 3,000 gallon water storage capacity for fire fighting and emergency purposes. The emergency water supply system, including the necessary compatible connector system and location of the water storage facility on the property, should meet with the approval of the Hawaii County Fire Department.
5. Your Additional Farm Dwelling Agreement has been approved based entirely 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.
6. The First Party shall allow the Second Party or its representative to inspect the farm upon reasonable prior notice.

**EXHIBIT**

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Robert D. and Teresa B. Henriques

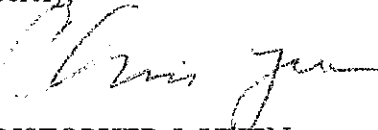
Page 6

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7. 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 February 11, 2006 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 Department - Kona

**EXHIBIT**

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R-703

STATE OF HAWAII  
BUREAU OF CONVEYANCES  
RECORDED  
MAR 08, 2004 . 08:02 AM

Doc No(s) 2004-047708



/s/ CARL T. WATANABE  
REGISTRAR OF CONVEYANCES

20 1/1 Z3

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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: ROBERT D. HENRIQUES and TERESA B. HENRIQUES**

**SECOND PARTY: COUNTY OF HAWAII**

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PROPERTY DESCRIPTION:

**TMK: (3) 7-4-006:002**

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ADDITIONAL FARM DWELLING AGREEMENT

THIS AGREEMENT made and executed this 10<sup>th</sup> day of February, 2004, by and between **ROBERT D. HENRIQUES and TERESA B. HENRIQUES**, herein called the "First Party," whose mailing address is 74-4939 Mamalahoa Highway, Holualoa, 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) 7-4-006:002 situated within the State Land Use Agricultural district and zoned Agricultural (A-1a & A-20a) 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.

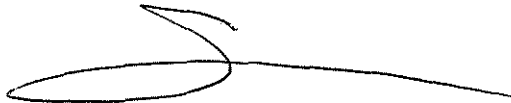


IT IS HEREBY FURTHER AGREED that if the property is situated within the State Land Use Agricultural district, the Second Party may impose a fine of not more than \$5,000 for violation of Section 205-4.5, Hawaii Revised Statutes. If the violation is not corrected within six months of such citation and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

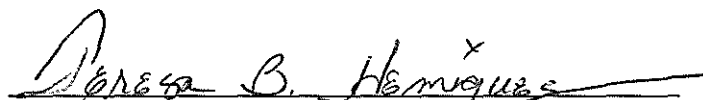
IN CONSIDERATION OF THE AFORESAID, the Second Party hereby approves this Agreement as being in conformity with Sections 205-2 and 205-4.5 of the Hawaii Revised Statutes, relative to permitted uses within the State Land Use Agricultural district. This Agreement is also in conformance with Chapter 25,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

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

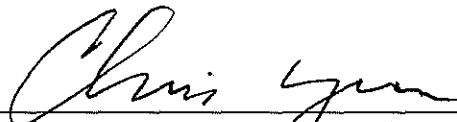
FIRST PARTY:



**ROBERT D. HENRIQUES**, Legal Owner

  
TERESA B. HENRIQUES, Legal Owner

SECOND PARTY:



**CHRISTOPHER J. YUEN**, Planning Director  
County of Hawaii Planning Department

STATE OF HAWAII )  
 ) SS.  
COUNTY OF HAWAII )

On this 20<sup>th</sup> day of FEBRUARY, 2004 before me personally appeared **ROBERT D. HENRIQUES and TERESA B. HENRIQUES** 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.

*Diana L. Akao*

DIANA L. AKAO  
Notary Public, State of HAWAII

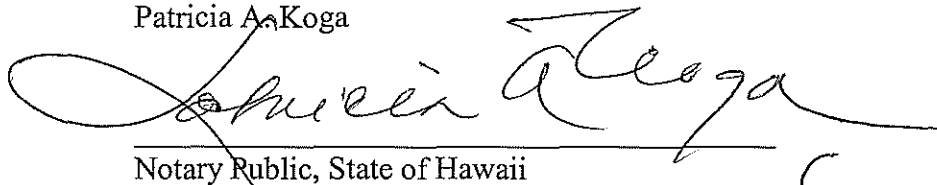
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My commission expires: 06/02/06

STATE OF HAWAII            )  
  ) SS  
COUNTY OF HAWAII        )

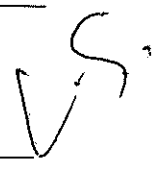
On this 4th day of March, 2004 before me personally appeared Christopher J. Yuen, to me personally known, who, being by me duly sworn, did say that he is the Planning Director of the County of Hawaii; and that the Planning Department of the County of Hawaii has no corporate seal; and that the instrument 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



MAP TOO BIG