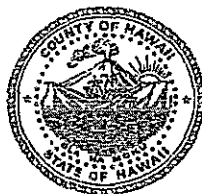


Harry Kim  
Mayor



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 9, 2004

Ms. Mary Thompson-Yurchyck  
83-5558 Middle Keei Road  
Captain Cook, Hawaii 96704

Dear Ms. Thompson-Yurchyck:

**SUBJECT:**           **Additional Farm Dwelling Agreement**  
**Applicant:**        **Mary Thompson-Yurchyck**  
**Owner:**           **Mary Thompson-Yurchyck**  
**State Land Use:**   **Agricultural**  
**County Zoning:**   **Agricultural (A-5a)**  
**Land Area:**        **1.77-acres**  
**Tax Map Key:**      **(3) 8-3-007:030**

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

**EXHIBIT**

A

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Ms. Mary Thompson-Yurchyck  
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January 9, 2004

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

(a) Ongoing agricultural activities include the following:

- i. 1.44 acres in coffee (1,200 trees) 20 avocado trees and approximately 30 noni trees.
- ii. Your application states that it takes approximately 60 hours a week to maintain and harvest the certified 100% organic farm (Certificate number 303401).
- iii. The additional farm dwelling will be occupied by your full time farm manager.

(b) Proposed agricultural activities include the following:

- i. Continuation of the above activity.

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 1924) approved on January 31, 1963, 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, GE Tax License (ID number 30095804), 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:
  - (a) Department of Water Supply (Letter dated January 7, 2004):

**EXHIBIT**

A

Ms. Mary Thompson-Yurchyck

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January 9, 2004

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

For your information, an existing 5/8-inch meter services this property, Account No. 920-17420, and currently has average daily consumption in excess of 400 gallons per day or 1 unit of water. For the past year, the average consumption has been 6 units of water, which is exceeding the current water availability to this parcel of 1 unit. Therefore, water is not available for this application as it is proposing an additional detached dwelling or rather an increase in water consumption.

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 Office (per tax clearance submitted):

“This is to certify that Thompson, Mary J. [owner of r3cord] has/have paid all real property taxes due to the County of Hawaii up to and including June 30, 2004.”

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

“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) dwelling** on the property **is approved** subject to the following conditions:

- 1. It is the responsibility of the applicant to ensure that all pertinent rules, regulations and requirements of the Zoning Code are adhered to, including but not necessarily limited to, building setbacks, height limits and separation of main structures.**
2. The Building Permit (BP) for the first single-family dwelling shall be applied for prior to or at the same time as this AFD BP. Bear in mind that there is a two year time limit from this approval for you to obtain a BP for the AFD.
3. 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.

**EXHIBIT**

A

Ms. Mary Thompson-Yurchyck

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January 9, 2004

4. 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.
5. The First Party shall consult with the Department of Water Supply to determine how you can come into compliance with water availability/usage rates.
6. **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 shall be adhered to.**
7. Your AFDA has been approved based on ongoing agricultural activity as summarized previously in this letter.
8. The First Party shall allow the Second Party or its representative to inspect the farm upon reasonable prior notice.
9. 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 January 10, 2006 may cause the Director to initiate proceedings to invalidate the AFDA.

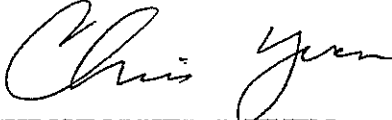
EXHIBIT

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Ms. Mary Thompson-Yurchyck  
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January 9, 2004

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**

A



R-864 STATE OF HAWAII  
BUREAU OF CONVEYANCES  
RECORDED  
MAR 12, 2004 08:02 AM  
Doc No(s) 2004-051629



/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: MARY JEAN THOMPSON-YURCHYCK**

**SECOND PARTY: COUNTY OF HAWAII**

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PROPERTY DESCRIPTION:

**TMK: (3) 8-3-007:030**

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ADDITIONAL FARM DWELLING AGREEMENT

THIS AGREEMENT made and executed this 9<sup>th</sup> day of January, 2004, by and between **MARY JEAN THOMPSON-YURCHYCK**, herein called the "First Party," whose mailing address is 83-5558 Middle Keei Road, Captain Cook, Hawaii 96704, 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) 8-3-007:030 situated within the State Land Use Agricultural district and zoned Agricultural (A-5a) 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.

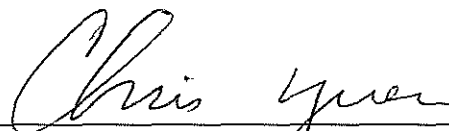


IN WITNESS WHEREOF, the parties have executed this agreement on the day and year first  
above written.

FIRST PARTY:

  
MARY JEAN THOMPSON-YURCHYCK, Legal Owner

SECOND PARTY:

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

STATE OF HAWAII )  
 ) SS.  
COUNTY OF HAWAII )

On this 16<sup>th</sup> day of January, 2004 before me personally appeared **MARY JEAN THOMPSON-YURCHYCK** to me known to be the person described in and who executed the foregoing instrument, and acknowledged that she executed the same as her free act and deed.

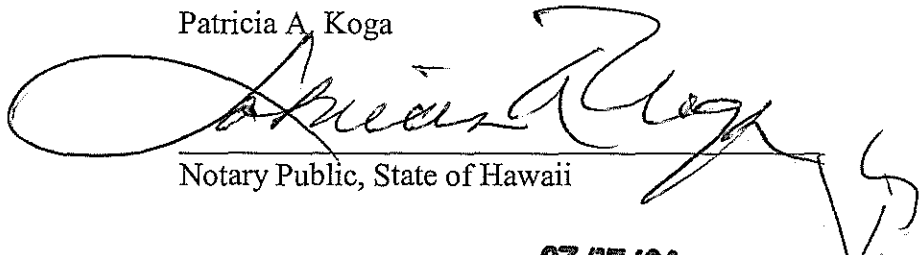
Kathleen J. Vail  
Kathleen J. Vail  
Notary Public, State of Hawaii

My commission expires: 6-14-2004

L.S.

STATE OF HAWAII            )  
  ) SS  
COUNTY OF HAWAII        )

On this 14<sup>th</sup> day of February, 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

150.00

Norman Yurchyuck and  
Mary Thompson-Yurchyuck  
Farm

83-5558 Middle Keei Rd.  
Captain Cook, HI 96704

Lot #3  
TMK 3:8/3-007-030  
1.77 acres

Aproximately:  
800 Producing  
Coffee Trees &  
20 Avacado Trees

Noni

238'

485.49

Proposed  
Cesspool

Property Line

Proposed 2 Bedroom  
Equivalent Dwelling

Shade house  
for small plants

80'

Parking  
Area

Proposed Catchment Tank

Aproximately:  
400 Producing  
Coffee Trees

Driveway

219'

Noni

544.31

Middle Keei Rd.

85

