

THE ORIGINAL OF THE DOCUMENT  
RECORDED AS FOLLOWS.  
STATE OF HAWAII  
BUREAU OF CONVEYANCES  
DATE \_\_\_\_\_ Doc 2007-203562  
DOCUMENT NOV 21, 2007 08:02 AM

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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: ANTHONY H. RODRIGUES  
ELEANORE K. RODRIGUES**

**SECOND PARTY: COUNTY OF HAWAII**

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PROPERTY DESCRIPTION:

**TMK: (3) 7-7-007:025**

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## ADDITIONAL FARM DWELLING AGREEMENT

THIS AGREEMENT made and executed this 5<sup>th</sup> day of February, 2007, by and between ANTHONY H. RODRIGUES and ELEANORE K. RODRIGUES, hereinafter referred to as the "First Party," whose mailing address is 77-6593 Walua Road, Kailua-Kona, Hawaii 96740, and the COUNTY OF HAWAII, hereinafter referred to as the "Second Party."

WHEREAS,

IT IS HEREBY AGREED that the First Party may construct a second dwelling (first farm dwelling) located on the property described by Tax Map Key (3) 7-7-007:025 situated within the State Land Use Agricultural district and zoned Agricultural (A-5a) (the "Property") 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 of Hawai'i and County laws and rules and regulations change to authorize said farm dwelling, upon request of the First Party, its successors, heirs, personal representatives and assigns, this

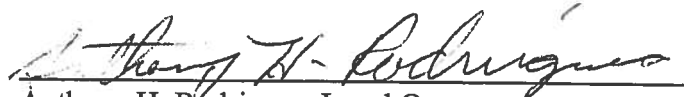
Agreement may be reconsidered for possible amendment and/or severance.

IT IS HEREBY FURTHER AGREED that if the property is situated within the State Land Use Agricultural district, the Second Party shall impose a fine against the First Party, its successors, heirs, personal representatives and assigns, of not more than \$5,000.00 for violation of any provision under section 205-4.5, Hawaii Revised Statutes. If the First Party fails to remove such violation within six months of such citation and the violation continues to exist, the First Party shall be subject to a citation for a new and separate violation. There shall be a fine of not more than \$5,000 for any additional violation. The Second Party may impose fines for any violation of Chapter 25, Hawaii County Code, as amended, in accordance with the procedures and fine schedule outlined in Section 25-2-35 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.

[REMAINDER OF THIS PAGE INTENTIONALLY LEFT BLANK]

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

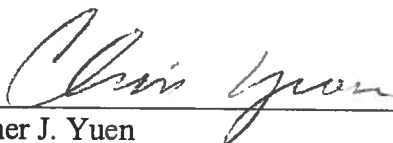
  
\_\_\_\_\_  
Anthony H. Rodrigues, Legal Owner

FIRST PARTY

  
\_\_\_\_\_  
Eleanore K. Rodrigues, Legal Owner

FIRST PARTY

COUNTY OF HAWAII

By   
\_\_\_\_\_  
Christopher J. Yuen  
Its Planning Director

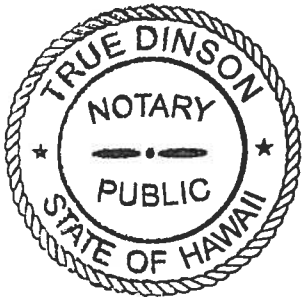
SECOND PARTY

STATE OF HAWAII )

) SS.  
)

COUNTY OF HAWAII

On this 23<sup>rd</sup> day of August, 2007 before me personally appeared ANTHONY H. RODRIGUES and ELEANORE K. RODRIGUES 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.



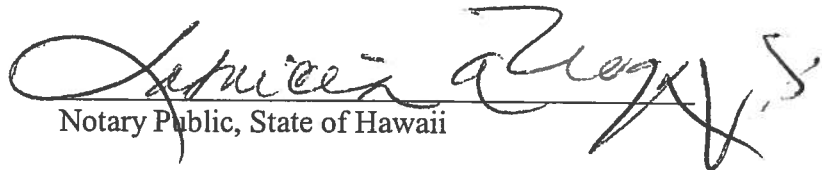
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Notary Public, State of Hawaii

My commission expires: August 13, 2010

STATE OF HAWAII            )  
  ) SS  
COUNTY OF HAWAII        )

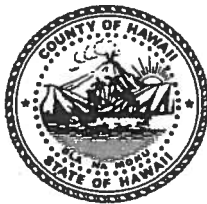
On this 16<sup>th</sup> day of November, 2007 before me personally appeared Christopher J. Yuen, to me personally known, who, being by me duly sworn, did say that he is the Planning Director of the County of Hawaii; and that the Planning Department of the County of Hawaii has no corporate seal; and that 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: 07/17/10

Harry Kim  
Mayor



Christopher J. Yuen  
Director

Brad Kurokawa, ASLA, LEED™ AP  
Deputy Director

## County of Hawaii

### PLANNING DEPARTMENT

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

February 5, 2007

Anthony H. Rodrigues  
77-6593 Walua Road  
Kailua-Kona, Hawaii 96740

Dear Mr. Rodrigues:

Additional Farm Dwelling Agreement Application (FDA-06-000143)

Applicant: Anthony H. Rodrigues

Owner: Anthony H. Rodrigues  
Eleanore K. Rodrigues

State Land Use: Agriculture

County Zoning: Agricultural (A-5a)

Land Area: 3.936 acres

TMK: (3) 7-7-007:025

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. 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.
2. Written authorization of the landowner(s) if the lessee filed the request.
3. 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. On-going agricultural activities include the following:
    - i. Maintain 2¾ acre for cattle.
    - ii. Maintain and harvest 400 coffee trees.
  - b. Proposed agricultural activities include the following:
    - i. Plant, maintain, and harvest additional 400 to 600 coffee trees.

Hawai'i County is an equal opportunity provider and employer

EXHIBIT "A"

- c. The labor man-hours are approximately 46-56 hours per week to maintain and distribute.
4. Applicant's commitment to the farm plan will be shown in the form of the enclosed Additional Farm Dwelling Agreement affidavit, to be notarized and submitted for recordation with the Bureau of Conveyances, which states that the additional dwelling shall be used for farm-related purposes.

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, 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, receipts of expenses, 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.
4. In addition, the following agencies have submitted their comments as stated below:
  - a. Department of Water Supply (DWS):  
No comments were received.
  - b. Real Property Tax Office (RPT):  
No comments were received.
  - c. Department of Health (DOH)  
No comments were received.

Decision:

In view of the above, your request to construct a **second dwelling** (first farm dwelling) is 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 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. The First Party shall adhere to 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 entirely on ongoing agricultural activity as summarized previously in this letter.
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 February 5, 2009 may cause the Director to initiate proceedings to invalidate the AFDA.
7. The First Party or current owner/lessee shall submit proof of remittance of the Department of Water Supply Service Lateral Installation Charge with the submittal of a building permit application.
8. An initial extension of time for the performance of conditions within the permit may be granted by the Planning Director upon the following circumstances:
  - A. Non-performance is the result of conditions that could not have been foreseen or are beyond the control of the applicants, successors, or assigns and that are not the result of their fault or negligence.
  - B. Granting of the time extension would not be contrary to the General Plan or Zoning Code.
  - C. Granting of the time extension would not be contrary to the original reasons for the granting of the permit.
  - D. The time extension granted shall be for a period not to exceed the period originally granted for performance (i.e., a condition to be performed within one year may be extended for up to one additional year).

Should any of these conditions not be met or substantially complied with in a timely

Anthony H. Rodrigues  
February 5, 2007  
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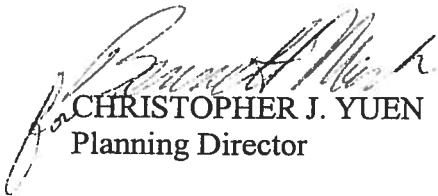
fashion, the Planning Director may initiate procedures to revoke this permit.

In reference to the use of a rain catchment system, we suggest the following:

1. Any dwelling not serviced by a County water system should be provided with and maintain a private potable rain-water catchment system with a minimum capacity of 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.
2. Any farm dwelling should be provided with and maintain a private water supply system with an additional minimum storage capacity of 3,000 gallons for fire fighting and other emergency purposes. The emergency water supply system, including the necessary compatible connection devices and the location of the water storage unit on the property, should meet with the approval of the Hawaii County Fire Department.

If you have any questions please call Deanne Bugado of our West Hawaii Office at 327-3510.

Sincerely,



CHRISTOPHER J. YUEN  
Planning Director

DEB:deb

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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"