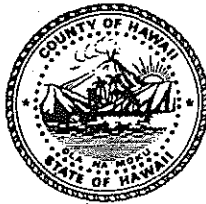


Harry Kim  
Mayor



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

July 17, 2008

Dr. William C. Bergin  
Mrs. Patricia C. Bergin  
66-1520 Puu Huluhulu Road  
Kamuela, HI 96743

Dear Dr. and Mrs. Bergin:

**SUBJECT:** Additional Farm Dwelling Agreement Application (FDA-08-000216)  
**Applicants:** William C. Bergin  
Patricia C. Bergin  
**Owners:** William C. Bergin Trust  
Patricia C. Bergin Trust  
**State Land Use:** Agriculture  
**County Zoning:** Agricultural (A-5a)  
**Land Area:** 11.0004 Acres  
**TMK:** (3) 6-6-005:013

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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. 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) Ongoing agricultural activities:

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Mrs. Patricia C. Bergin  
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- i. Fruit orchards and commercial bamboo totaling approximately four acres, including approximately 102 mango trees, 2 avocado trees, 36 banana mats, 80 pineapple plants, 42 bamboo clumps, 7 loquat trees, 12 lychee trees and 7 sapota trees.

(b) Proposed agricultural activities include:

- i. Commencing in early 2010, expand mango production with 80 additional mango trees on a 1.65 acre (approximate) portion of the property.

(c) The labor man-hours for the existing and proposed agricultural activities will require one full-time farm employee, working 40 or more hours per week on a permanent basis. In addition, the applicant, as resident of the proposed second farm dwelling, will provide oversight and direction to the routine manual labor activities to maintain, harvest and market the crops and to maintain the equipment and farm infrastructure.

4. Evidence of existing engagement in agricultural productivity in the form of (i) a State of Hawaii Department of Taxation's General Excise (GE) Tax Return and (ii) expense and income statements for farm operations and sales.

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 by subdivision (SUB 5257) approved on June 7, 1985, 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 (No. W04679142-01), and the agreement to use the dwelling for agricultural or farm-related activity on the building site demonstrate that there is/will be income producing agricultural activity and the income is/will be taxed.

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

(a) The Department of Water Supply (DWS) (Memorandum dated June 16, 2008):

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

“Please be informed that the subject parcel is currently served by a two 5/8-inch meters, which are each adequate for one dwelling at an average daily usage of 400 gallons. Therefore, the Department has no objections to the proposed application as there are existing services available for the existing dwelling as well as the proposed additional farm dwelling.

“Our records also indicate that both of the existing services to the subject parcel have backflow prevention assemblies installed, which is required for all services to parcels that have existing agricultural activity.

“Should there be any questions, please contact Mr. Ryan Quitoriano of our Water Resources and Planning Branch at 961-8070, extension 256.”

(b) Real Property Tax Office:

No comments were received.

(c) Department of Health (Memorandum dated July 8, 2008):

“We recommend that you review all of the Standard Comments on our website: [www.state.hi.us/health/environmental/env-planning/landuse/landuse.html](http://www.state.hi.us/health/environmental/env-planning/landuse/landuse.html). Any comments specifically applicable to this project should be adhered to.”

Decision:

In view of the above, your request to construct a **second** 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.

Dr. William C. Bergin  
Mrs. Patricia C. Bergin  
July 17, 2008  
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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 ("AFDA") 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 with all required attachments has been recorded at the Bureau of Conveyances.
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 your 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 July 17, 2010 may cause the Director to initiate proceedings to invalidate the AFDA.

In reference to the Department of Water Supply's comment, 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.

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Mrs. Patricia C. Bergin  
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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.

Should you have questions or require further information, please feel free to contact Keola Childs of our West Hawaii office at 327-3510.

Sincerely,

  
CHRISTOPHER J. YUEN  
Planning Director

CKC:ckc

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Enclosure: AFDA document  
AFDA document instruction sheet

xc: Mr. Milton Pavao, DWS  
Mr. Mike McCall, RPT  
Planning Department – West Hawaii Office

THE ORIGINAL OF THE DOCUMENT  
RECORDED AS FOLLOWS:  
STATE OF HAWAII

BUREAU OF CONVEYANCES

DATE \_\_\_\_\_  
DOCUMENT NO. **Doc 2011-141298**  
**SEP 02, 2011 08:02 AM**

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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**

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PARTIES TO DOCUMENT:

**FIRST PARTY: DR. WILLIAM C. BERGIN and PATRICIA C. BERGIN**

**SECOND PARTY: COUNTY OF HAWAI'I**

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PROPERTY DESCRIPTION:

**TMK: (3) 6-6-005:013**

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CANCELLATION OF AGREEMENT

THIS CANCELLATION OF AGREEMENT, made and executed this 31<sup>st</sup> day of August, 2011, by and between **DR. WILLIAM C. BERGIN and PATRICIA C. BERGIN**, herein called the "First Party," whose mailing address is 66-1520 Puu Huluhulu Road, Kamuela, Hawai'i 96743 and the **COUNTY OF HAWAI'I**, herein called the "Second Party,"

WITNESSETH

WHEREAS, on August 21, 2008 an agreement was entered into by and between the First Party 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) 6-6-005:013; and

WHEREAS, the subject area is zoned Agricultural (A-5a) by the County of Hawai'i and classified Agricultural by the State Land Use Commission; and

WHEREAS, the agreement to construct said improvements was duly recorded with the State of Hawai'i Bureau of Conveyances as Document Number 2008-135311; and

WHEREAS, the property described as Tax Map Key (3) 6-6-005:013 is being subdivided into two (2) lots leaving only one dwelling on each lot; 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 because the subdivision will result in no second dwellings being located on either of the lots created from the property described as Tax Map Key (3) 6-6-005:013.

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 agreement dated August 21, 2008, recorded at the State of Hawai'i Bureau of Conveyances Document Number 2008-135311, between the First Party and the Second Party is no longer applicable and that the agreement is hereby declared null and void.

The Second Party agrees that the agreement dated August 21, 2008 no longer constitute covenants or encumbrances running with the land as it relates to Tax Map Key (3) 6-6-005:013.

The First Party agrees to pay for all of the necessary costs and expenditures to record this Cancellation of 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 agreement dated August 21, 2008 no longer constitutes an encumbrance on Tax Map Key (3) 6-6-005:013.



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

FIRST PARTY:

William C. Bergin  
DR. WILLIAM C. BERGIN  
LEGAL OWNER

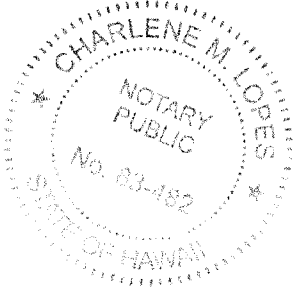
Patricia C. Bergin  
PATRICIA C. BERGIN  
LEGAL OWNER

SECOND PARTY:

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

STATE OF HAWAII )  
 ) SS:  
COUNTY OF HAWAII )

On this 1st day of August 2011, before me personally appeared **DR. WILLIAM C. BERGIN and PATRICIA C. BERGIN** 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.



Charlene M. Lopes  
Notary Public, State of Hawaii Charlene M. Lopes

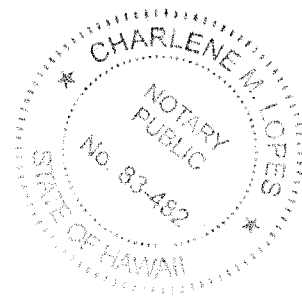
My commission expires: 12/15/2011

Notarized # Pages 6

Notary Public Charlene M. Lopes Third Circuit

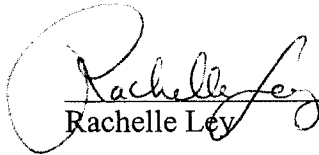
Doc. No. Cancellation of  
Additional Form Swelling Agreement

Charlene M. Lopes 8/11/2011  
Notary Signature Date



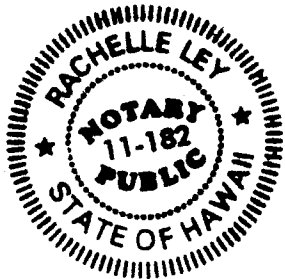
STATE OF HAWAI'I )  
 ) SS.  
 COUNTY OF HAWAI'I )

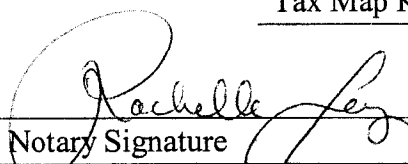
On August 31, 2011, before me personally appeared BJ Leithead Todd, to me personally known, who, being by me duly sworn, did say that BJ Leithead Todd is the Planning Director of the County of Hawai'i, and that the Planning Department of the County of Hawai'i has no corporate seal; and that the instrument was signed on behalf of the Planning Department of the County of Hawai'i, a government agency, and said BJ Leithead Todd acknowledged the instrument to be the free act and deed of said Planning Department, County of Hawai'i.

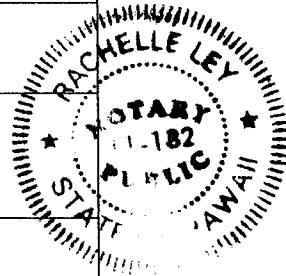
  
 Rachelle Ley

Notary Public, Third Judicial Circuit  
 State of Hawai'i

My Commission Expires: June 12, 2015



Document Date:	<u>August 31, 2011</u>	No. of Pages:	<u>6</u>
Notary Name:	<u>Rachelle Ley</u>		<u>Third Judicial Circuit</u>
Doc. Description:	<u>Recordation of Cancellation of Additional Farm Dwelling Agreement (AFDA)</u>		
	<u>Tax Map Key # 6-6-005:013</u>		
Notary Signature			<u>8/31/2011</u> Date



Scanned Map  
Unavailable  
Due to Size

See File

