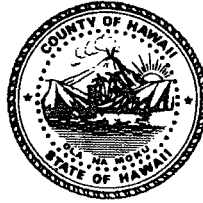


William P. Kenoi
Mayor



BJ Leithead Todd
Director

Margaret K. Masunaga
Deputy

County of Hawai'i

PLANNING DEPARTMENT

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

November 3, 2010

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

To Whom It May Concern:

**SUBJECT: Cancellation of Additional Farm Dwelling Agreement
Recordation
Tax Map Key: (3) 9-4-005:004**

Enclosed please find the Cancellation of Additional Farm Dwelling Agreement for the subject parcel, check # 8357 from the First Party in the amount of \$30.00 for the recordation fee, and a self-addressed return envelope, submitted for recordation.

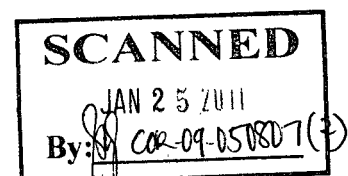
Should you have questions, please contact Jonathan Holmes of this office at 961-8288.

Sincerely,

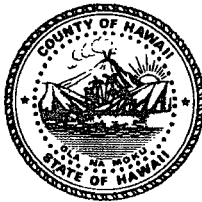

BJ LEITHEAD TODD
Planning Director

JH/MM: mm
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Enclosures: Cancellation of AFDA document
Check # 8357
1 Self-addressed Return Envelope



William P. Kenoi
Mayor



BJ Leithead Todd
Director

Margaret K. Masunaga
Deputy

County of Hawai'i

PLANNING DEPARTMENT

Aupuni Center • 101 Pauahi Street, Suite 3 • Hilo, Hawai'i 96720
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October 20, 2010

Mr. Gregg R.A. Nelson and
Ms. Coreen Nelson
P.O. Box 113
Nā'ālehu, Hawai'i 96772

Dear Mr. and Ms. Nelson:

SUBJECT: Cancellation of Additional Farm Dwelling Agreement
Applicant: GREGG R.A. AND COREEN NELSON
Land Owner: GREGG R.A. AND COREEN NELSON
State Land Use: Agricultural
County Zoning: Agricultural (A-20a)
Land Area: 20.00 acres
Tax Map Keys: (3) 9-4-005:004

This is in response to an email received by this office on October 18, 2010 from Jason Knable of Carlsmith Ball LLP, formally requesting the cancellation of the Additional Farm Dwelling Agreement for your property.

As owners of the subject property, you were granted an Additional Farm Dwelling Agreement, and that agreement was recorded with the State of Hawaii Bureau of Conveyances as Document Number 2009-203443083365 on June 1, 2009. A Court Ordered Partition (Civil No. 06-1-0049), Subdivision 09-000864, approved August 18, 2009, rendered each dwelling a First Farm Dwelling.

In light of the above, please find enclosed a "Cancellation of Additional Farm Dwelling Agreement" document. Please be sure that all of the information in the document is correct. If any changes need to be made, do so in black ink and have those changes initialed by the notary. Please sign in the appropriate location and have your signatures notarized. Finally, return the document to this Department with a check in the amount of \$30.00 payable to the Bureau of Conveyances for recordation purposes. A copy of the recorded document will be forwarded to you when it is received by this office.

Mr. Gregg R. A. Nelson and
Ms. Coreen Nelson
Page 2
October 20, 2010

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

Sincerely,


BJ LETHEAD TODD
Planning Director

JG/MM:mm
O:\AFDA\AFDAJRH\term\NelsonTermLtr(2).doc

Enclosures: Cancellation of Agreement Form
Additional Farm Dwelling Agreement Instructions
Return Envelope

cc: Jason K. Knable
Carlsmith Ball LLP
121 Waiianuenue Avenue
Hilo, Hawaii 96720

AFTER RECORDATION, RETURN BY MAIL TO:

Planning Department
County of Hawai'i
101 Pauahi Street, Suite 3
Hilo, Hawai'i 96720

TITLE OF DOCUMENT:

CANCELLATION OF ADDITIONAL FARM DWELLING AGREEMENT

PARTIES TO DOCUMENT:

FIRST PARTY: GREGG R.A. NELSON AND COREEN NELSON

SECOND PARTY: COUNTY OF HAWAI'I

PROPERTY DESCRIPTION:

TMK: (3) 9-4-005:004

CANCELLATION OF AGREEMENT

THIS AGREEMENT made and executed this 1st day of November, 2010, by and between **GREGG R.A. NELSON AND COREEN NELSON**, herein called the "First Party," whose mailing address is P.O. Box 113, Nā'alehu, Hawai'i 96772 and the **COUNTY OF HAWAII**, herein called the "Second Party,"

WITNESSETH

WHEREAS, on May 7, 2009 an agreement was entered into by and between the First Party and the Second Party whereby the First Party was authorized to construct a farm dwelling (being the second dwelling) on the property described as Tax Map Key (3) 9-4-005:004; and

WHEREAS, the subject area is zoned Agricultural (A-20a) by the County of Hawaii 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 2009-083365; and

WHEREAS, the property described as Tax Map Key (3) 9-4-005:004 has not had the authorized additional farm dwelling constructed upon it; 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 First Party no longer desires to construct the additional dwelling on the property described as Tax Map Key (3) 9-4-005:004.

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 May 7, 2009, recorded at the State of Hawai'i Bureau of Conveyances Document Number 2009-083365, between the First Party and the Second Party is no longer applicable and that the agreement is hereby declared null and void.

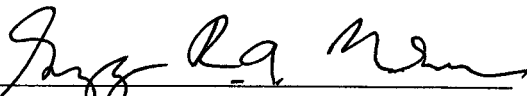
The Second Party agrees that the agreement dated May 7, 2009 no longer constitutes a covenant or encumbrance running with the land as it relates to Tax Map Key (3) 9-4-005:004.

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 May 7, 2009 no longer constitutes an encumbrance on Tax Map Key (3) 9-4-005:004.

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

FIRST PARTY:




GREGG R.A. NELSON
LEGAL OWNER

AND



COREEN NELSON
LEGAL OWNER

SECOND PARTY:



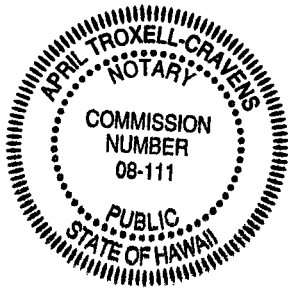
BJ LEITHEAD TODD, Planning Director
County of Hawai'i Planning Department

STATE OF HAWAII)
) SS:
COUNTY OF HAWAII)

On this 22nd day of October 2010, before me personally appeared **GREGG R.A. NELSON AND COREEN NELSON** to me known to be the person described in and who executed the foregoing instrument, and acknowledged that they executed the same as their free act and deed.

April Troxell-Cravens
Notary Public, State of Hawaii

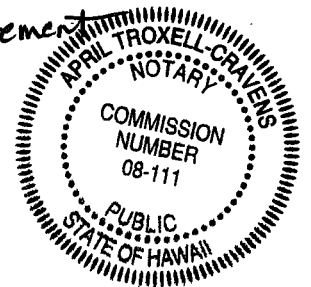
My commission expires: 4/27/2012



Doc. Date: 11/11 # Pages: 6

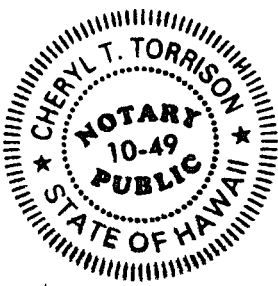
Notary Name: April Troxell-Cravens 3rd Circuit

Doc. Description: Cancellation of Additional Farm Dwelling Agreement



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

On November 1, 2010, 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 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.

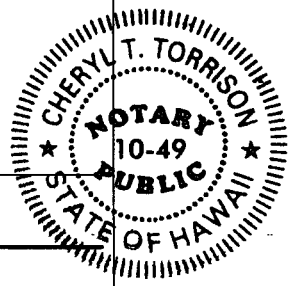


Cheryl T. Torrison

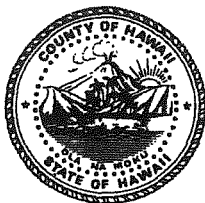
CHERYL T. TORRISON
Notary Public, State of Hawai'i

My Commission Expires: 03-07-2014

Doc. Date: <u>November 1, 2010</u>	# Pages: <u>6</u>
Notary Name: Cheryl T. Torrison	Third Circuit
Doc. Description: <u>Cancellation of Additional Farm Dwelling Agreement Gregg R.A. Nelson & Coreen Nelson 9-4-005:004</u>	
<i>Cheryl T. Torrison</i> Notary Signature	<u>11/1/2010</u> Date



William P. Kenoi
Mayor



BJ Leithead Todd
Director

Margaret K. Masunaga
Deputy

County of Hawai'i

PLANNING DEPARTMENT

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

May 7, 2009

Gregg R.A. Nelson and
Coreen Nelson
P.O. Box 113
Nā'ālehu, Hawai'i 96772

Dear Sir/Madam:

SUBJECT: Additional Farm Dwelling Agreement (FDA-09-000247)
Applicant: Gregg R.A. Nelson and Coreen Nelson
Land Owner: James C. Panas, Etal
State Land Use: Agricultural
County Zoning: A-20a
Land Area: 40.261 Acres
Tax Map Key: (3) 9-4-005:004

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. Names, address and the signatures of the applicants/landowners.
2. A farm plan or evidence of the applicants' 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. Your farm plan included the following ongoing income producing agricultural activities:

- a. Ongoing agricultural activities include the following:
 - i. The activity involves a working farm for the propagation of Nubian, Kiko and Spanish Meat goats; Rhode Island Red chickens, pineapples and taro,
 - ii. Approximately 69.5 hours per week are required for running the farm; and
3. 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, Hawai'i 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 and the agreement to use the dwelling for agricultural or farm-related activity on the building site demonstrate that there is income producing agricultural activity.
4. In addition, the following agencies have submitted their comments as stated below:
 - a. Department of Water Supply (DWS): (memorandum dated March 30, 2009)

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

Gregg and Coreen Nelson
Page 3
May 7, 2009

Please be informed an existing 5/8-inch meter services the subject parcel, which is adequate for only one dwelling unit and limited to an average of 400 gallons per day. Inasmuch as this application is proposing an additional dwelling, the installation of a separate 5/8-inch meter would normally be required in accordance with the Department's regulations. However, as the parcel does not currently front on the Department's existing waterline, the Department cannot provide an additional service.

The applicant indicated that the additional farm dwelling will be on a water catchment system. Therefore, the Department has no objections to the proposed application, subject to the applicant understanding and accepting that the Department cannot provide service to the proposed additional farm dwelling. Should the application be approved, both dwellings shall not share the existing meter.

Further, as the applicant indicates that there is existing and proposed agricultural activity within the subject parcel, a reduced pressure type backflow prevention assembly must be installed (if one does not already exist) within five (5) feet of the existing meter on private property. The installation of the backflow prevention assembly must be inspected and approved by the Department before commencement of water service. A copy of the Department's backflow prevention handout will be sent to the applicant to help them understand this requirement.

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

b. Department of Health (DOH): (memorandum dated March 30, 2009)

"We recommend that you review all of the Standard Comments on our website: www.state.hi.us/health/environmental/env-planning/landuse/landuse.htm. Any comments specifically applicable to this project should be adhered to.

The use of individual wastewater systems is allowed. The type and number of individual wastewater systems to be used will be determined by the wastewater rules in effect at the time of building permit application."

Decision:

In view of the above, your request to construct an **Additional Farm Dwelling** on the property is approved subject to the following conditions:

1. 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.
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 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.
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 any other reviewing agencies/divisions listed on the Building Permit (BP) Application shall be adhered to.
4. The applicant is responsible for any State and Federal tax consequences due to the income produced from the farm activity.
5. Your AFDA has been approved based on ongoing agricultural activity as summarized previously in this letter.
6. The First Party shall allow the Second Party or its representative to inspect the farm upon reasonable prior notice.
7. This AFDA 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 BP for this additional farm dwelling on or before May 7, 2011 may cause the Director to initiate proceedings to invalidate the AFDA.

Gregg and Coreen Nelson

Page 5

May 7, 2009

Please feel free to contact Larry Nakayama of this office at 961-8288 should you have any further questions and/or concerns.

Sincerely,



BJ LEITHEAD TODD
Planning Director

LN/JG:jg

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Enclosures: AFDA document
AFDA document instruction sheet

xc: Mr. Milton Pavao, DWS
Mr. Mike McCall, RPT