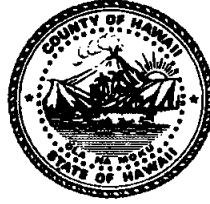


William P. Kenoi
Mayor



BJ Leithead Todd
Director

Margaret K. Masunaga
Deputy

County of Hawaii

PLANNING DEPARTMENT

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

January 27, 2011

Mr. J. Gary Robb
74-4910 Hao Kuni Place #2
Kailua-Kona, HI 96740

Dear Mr. Robb:

SUBJECT: Additional Farm Dwelling Agreement Application (FDA-10-000289)
Applicant: J. Gary Robb
Owners: J. Gary Robb Revocable Living Trust dated
March 16, 2006, and any amendments thereto
State Land Use: Agricultural
County Zoning: Agricultural (A-1a)
Land Area: 1.0 Acres
TMK: (3) 7-4-007:100

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 income-producing agricultural activities:

- (a) Ongoing agricultural activities include the following:
 - 1. Cultivation of approximately 250 palm trees seedlings in several portions of the one-acre site together comprising approximately 10,000 square feet of nursery area. Annual sales of approximately 135 palm trees.
 - (b) Proposed agricultural activities include the following, planned for completion prior to December 31, 2012:
 - 1. Expansion of palm tree nursery with an additional 250 palms for a total average nursery stock of 500 palm trees within same 10,000 square foot nursery area. Annual sales projected to be 200 or more palm trees.
 - (c) The labor man-hours for the above existing and proposed activities are projected to average, on an annual basis, twenty (20) or more hours per week.
4. Evidence of existing engagement in agricultural productivity in the form of agricultural operating expenses, product sales receipts and a copy of the General Excise Tax Returns for "J. Gary Robb" has also been presented.
5. The 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.** (emphases added)
- 2. The subject lot was created by Subdivision No. 7905-R approved March 3, 2005, which, pursuant to HRS §205-4.5(b), requires the first dwelling on the lot to be a farm dwelling.
- 3. The Farm Plan, General Excise Tax License, 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.

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

(a) Department of Water Supply (Letter dated January 20, 2011; COR-11-069161):

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

Please be informed that an existing 5/8-inch meter services this property and is adequate for only one dwelling unit at 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 Rules and Regulations. However, the Department cannot provide an additional meter for the proposed additional farm dwelling as the previous subdivision that created the subject parcel used the remaining water units that were available at that time.

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, and the water system plumbing between the two dwellings shall not be interconnected in any way.

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 December 23, 2010, Correspondence No. COR-10-068624):

“We recommend that you review all of the Standard Comments on our website: <http://hawaii.gov/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.
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. The enclosed Additional Farm Dwelling Agreement (“AFDA”) must be returned to the

Planning Department with the appropriate notarized signatures of all persons comprising the "First Party" to the agreement along with a check made out to the Bureau of Conveyances in the amount of \$30.00 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.

4. The First Party shall comply with 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.
5. Your Additional Farm Dwelling Agreement has been approved based on both your existing and your proposed agricultural activities as presented in your farm plan and summarized previously in this letter. **It is required that the First Party (owners and their lessees and their successors in interest) to the Agreement shall continue to carry out and maintain this farm plan for the life of the additional farm dwelling.** The Second Party (County of Hawaii Planning Department) of the Agreement may allow modifications for good cause shown by First Party.
6. The First Party shall allow the Second Party or its representative to inspect the farm from time to time upon reasonable prior notice.
7. **The First Party is required to secure a building permit from the Department of Public Works, Building Division, for the construction of the additional farm dwelling on or before January 27, 2013.** Failure to secure a building permit for this additional farm dwelling on or before January 27, 2013 may cause the Director to initiate proceedings to invalidate the AFDA.

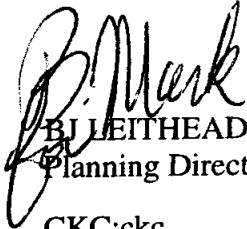
With regard to the Department of Water Supply's comment, we suggest the following:

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.
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.

Mr. J. Gary Robb
January 27, 2011
Page 5 of 5

Should you have any questions, please contact Keola Childs of our West Hawaii office at 327-3510.

Sincerely,



BJ LEITHEAD TODD
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

AFTER RECORDATION, RETURN BY MAIL TO:

County of Hawaii Planning Department
101 Pauahi Street, Suite 3
Hilo, Hawaii 96720

Total Pages: 11

TITLE OF DOCUMENT:

ADDITIONAL FARM DWELLING AGREEMENT

PARTIES TO DOCUMENT:

FIRST PARTY: J. GARY ROBB REVOCABLE LIVING TRUST dated March 16,
2006, and any amendments thereto

SECOND PARTY: COUNTY OF HAWAII

PROPERTY DESCRIPTION:

TMK: (3) 7-4-007:100

ADDITIONAL FARM DWELLING AGREEMENT

THIS AGREEMENT made and executed this ____ day of _____, 2011, by and between the J. GARY ROBB REVOCABLE LIVING TRUST DATED MARCH 16, 2006, AND ANY AMENDMENTS THERETO, hereinafter referred to as the "First Party," whose mailing address is 74-4910 Hao Kuni Place #2, Kailua-Kona, Hawaii, 96740, and the COUNTY OF HAWAII, hereinafter referred to as 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) 7-4-007:100 situated within the State Land Use Agricultural district and zoned Agricultural (A-1a) (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. This 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 Agreement and incorporated herein 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.

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

J. GARY ROBB REVOCABLE LIVING TRUST DATED
MARCH 16, 2006, AND ANY AMENDMENTS
THERE TO

By _____
J. Gary Robb, Trustee

FIRST PARTY

COUNTY OF HAWAII

By _____
BJ LEITHEAD TODD
Its Planning Director

SECOND PARTY

STATE OF HAWAII)
)
COUNTY OF HAWAII) SS.

On _____ before me appeared J. GARY ROBB, Trustee of the J. Gary Robb Revocable Living Trust dated March 16, 2006, and any amendments thereto, to me personally known, who, being by me duly sworn or affirmed, did say that such person executed the foregoing instrument as the free act and deed of such person, and if applicable in the capacity shown, having been duly authorized to execute such instrument in such capacity.

Signature: _____

Name: _____
Notary Public, State of Hawaii

My commission expires: _____

(Official Stamp or Seal)

<u>NOTARY CERTIFICATION STATEMENT</u>	
Document Identification or Description: _____ _____	
Doc. Date: _____	
No. of Pages: _____ [including exhibits]	
Jurisdiction: Third Circuit	
Signature of Notary	Date of Notarization and Certification Statement
_____ (Official Stamp or Seal)	
Printed Name of Notary	

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

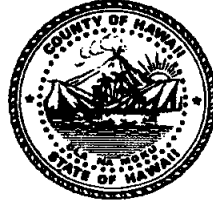
On _____, before me personally appeared BJ Leithead Todd, to me personally known, who, being by me duly sworn, did say that BJ Leithead Todd is the Planning Director of the County of Hawai'i, and that the Planning Department of the County of Hawaii has no corporate seal; and that the instrument was signed 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
Notary Public, State of Hawai'i

My Commission Expires: 03-07-2014

<u>NOTARY CERTIFICATION STATEMENT</u>	
Doc. Description:	
Doc. Date: _____ or <input type="checkbox"/> Undated at time of notarization.	
No. of Pages: _____ [including exhibits] Jurisdiction: Third Circuit	
Notary Name: Cheryl T. Torrison	
_____ Notary Signature	_____ Date

William P. Kenoi
Mayor



BJ Leithead Todd
Director
Margaret K. Masunaga
Deputy

County of Hawaii

PLANNING DEPARTMENT

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January 27, 2011

Mr. J. Gary Robb
74-4910 Hao Kuni Place #2
Kailua-Kona, HI 96740

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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 income-producing agricultural activities:

EXHIBIT "A"