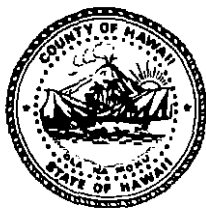


William P. Kenoi
Mayor



BJ Leithead Todd
Director

Margaret K. Masunaga
Deputy

West Hawai'i Office
74-5044 Ane Keohokalole Hwy
Kailua-Kona, Hawai'i 96740
Phone (808) 323-4770
Fax (808) 327-3563

County of Hawai'i
PLANNING DEPARTMENT

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

January 19, 2012

Mr. Kelly Frame
Ms. Sharon Spence
25 Willett Pond Drive
Westwood, MA 02090

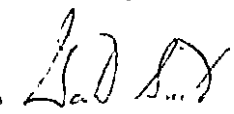
Dear Mr. Frame and Ms. Spence:

SUBJECT: RECORDED ADDITIONAL FARM DWELLING AGREEMENT
FDA-11-000302
Document No(s). 2011-145185
TMK: (3) 4-7-002:034

Enclosed is Document No. 2011-145185 (Original) for your files. A copy of this document will be maintained in our files at the Hilo office.

If you should have any questions, please contact this office at (808) 961-8288.

Sincerely,


for BJ LEITHEAD-TODD
Planning Director

SHG/shg

p:\admin\permits\division\afda\2011\Fda-11-000302 kelly frame & sharon spence\recorded\afda-frame&spence47002034.doc

Enclosure: Agreement (Original)

30



R-716 STATE OF HAWAII
BUREAU OF CONVEYANCES
RECORDED
SEP 09, 2011 08:02 AM
Doc No(s) 2011-145185



/s/ NICKI ANN THOMPSON
REGISTRAR

20 1/1 Z8

dw

AFTER RECORDATION, RETURN BY MAIL TO:

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

TITLE OF DOCUMENT:

ADDITIONAL FARM DWELLING AGREEMENT

PARTIES TO DOCUMENT:

FIRST PARTY: KELLY FRAME and SHARON SPENCE

SECOND PARTY: COUNTY OF HAWAI'I

PROPERTY DESCRIPTION:

TMK: (3) 4-7-002:034

ADDITIONAL FARM DWELLING AGREEMENT

THIS AGREEMENT made and executed this 13 day of August, 2011, by and between **KELLY FRAME and SHARON SPENCE**, herein called the "First Party," whose mailing address is 25 Willett Pond Drive, Westwood, MA, 02090, 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) 4-7-002:034 situated within the State Land Use Agricultural district and zoned Agricultural (A-40a) 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, Hawai'i 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, Hawai'i County Code, as amended, in accordance with the procedures and fine schedule outlined in Division 3, Article 2, of said code.

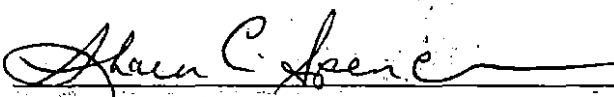
IN CONSIDERATION OF THE AFORESAID, the Second Party hereby approves this Agreement as being in conformity with Sections 205-2 and 205-4.5 of the Hawai'i Revised Statutes, relative to permitted uses within the State Land Use Agricultural district. This Agreement is also in conformance with Chapter 25, Hawai'i County Code, as amended.

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

FIRST PARTY:

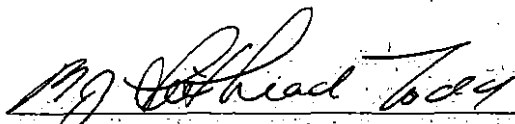


KELLY FRAME, Legal Owner



SHARON C. SPENCE, Legal Owner

SECOND PARTY:



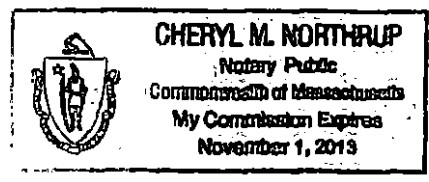
BJ LEITHEAD TODD, Planning Director
County of Hawai'i Planning Department

STATE OF ~~HAWAII~~ ^{Massachusetts})
COUNTY OF ~~HAWAII~~ ^{Norfolk}) SS.
)

On this 13th day of August, 2011 before me personally appeared **KELLY FRAME and SHARON SPENCE** 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.

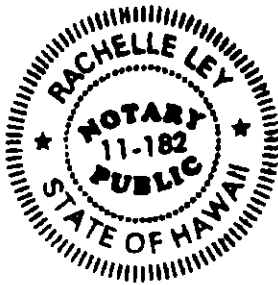
Ceryl M. Northrup
Notary Public, State of Massachusetts

My commission expires: November 1, 2013



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

On September 1, 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.



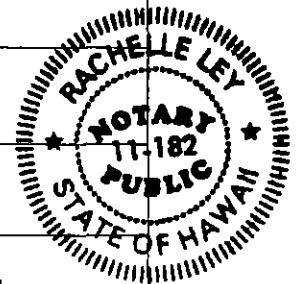
Rachelle Ley

Rachelle Ley

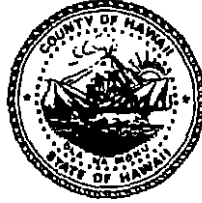
Notary Public, Third Judicial Circuit
State of Hawai'i

My Commission Expires: June 12, 2015

| | | | |
|---|---|--------------------|-------------------------------|
| Document Date: | <u>August 13, 2011</u> | No. of Pages: | <u>6</u> |
| Notary Name: | <u>Rachelle Ley</u> | | <u>Third Judicial Circuit</u> |
| Doc. Description: | <u>Additional Farm Dwelling Agreement</u> | | |
| | <u>Tax Map Key (3) 4-7-002:034</u> | | |
| <i>Rachelle Ley</i> Notary Signature | | <u>SEP 01 2011</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

July 18, 2011

Mr. Kelly Frame
Ms. Sharon C. Spence
25 Willett Pond Drive
Westwood, MA 02090

Dear Mr. Frame and Ms. Spence:

SUBJECT: Additional Farm Dwelling Agreement (FDA-11-000302)
Applicant: KELLY FRAME and SHARON SPENCE
Land Owner: KELLY FRAME and SHARON SPENCE
State Land Use: Agricultural ("A")
County Zoning: A-40a (Agricultural, minimum building site of forty acres)
Land Area: 42.637 acres
Tax Map Key: (3) 4-7-002:034

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 Additional Farm Dwelling (AFD) is needed in connection with the agricultural productivity or farming operation. Your farm plan included the following existing income-producing agricultural activities:
 - a. Ongoing agricultural activities for the farm, estimated at 16-24 hours per week, include the following:

Mr. Kelly Frame
Ms. Sharon Spence
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July 18, 2011

- i. Existing cattle ranching;
 - ii. Maintaining the fences, checking the water and maintaining the herds;
 - iii. Clearing the invasive ironwood trees and other undergrowth; and
 - iv. Wild pig control.
 - b. In addition, proposed agricultural activity, estimated at 0-8 hours per week, includes the following:
 - i. Reclamation and management of macadamia orchard.
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 by subdivision (SUB 5136-a) approved on May 9, 1986, pursuant to HRS §205-4.5(b), requires the first dwelling on the lot to be a farm 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 June 23, 2011:

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

Mr. Kelly Frame
Ms. Sharon Spence
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July 18, 2011

Please be informed that the subject property is not within the Department's existing service limits. 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 there be any questions, please contact Mr. Ryan Quitariano of our Water Resources and Planning Branch at 961-8070, extension 256."

b. Department of Health (DOH) memorandum dated May 27, 2011:

"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.

Lands formerly used for sugarcane production are now being developed into communities where residential homes, schools and commercial businesses are being constructed. Chemicals associated with the sugarcane industry persist in soil today and may be a threat to public health and the environment. Elevated arsenic levels were discovered in soil at former sugarcane production areas on the islands. The HEER Office has identified former sugarcane production areas for assessment throughout the state and plans to work with property owners to conduct environmental assessments to identify and address elevated soil arsenic levels prior to finalizing development plans for the properties.

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.

The same website also features a Healthy Community Design Smart Growth Checklist (Checklist) created by Built Environment Working Group (BEWG) of the Hawaii State Department of Health. The BEWG recommends that state and county planning departments, developers, planners, engineers and other interested parties apply the healthy built environment principles in the Checklist whenever they plan or review new developments or redevelopments projects. We also ask you to share this list with others to increase community awareness on healthy community design."

Mr. Kelly Frame
Ms. Sharon Spence
Page 4 of 5
July 18, 2011

DECISION:

In view of the above, your request to construct an **Additional Farm Dwelling (AFD)** 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 \$30.00 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 and proposed 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. The Department of Water Supply has determined that a County approved water system is not available to support the AFD. An Additional Farm Dwelling that is not served by an approved water system may be permitted to use a water catchment system in an area that receives an annual rainfall of at least eighty (80) inches of rain per year. A minimum 9,000 gallon water catchment system for

Mr. Kelly Frame
Ms. Sharon Spence
Page 5 of 5
July 18, 2011

domestic consumption and fire fighting purposes will be required for the AFDA.

8. 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 July 18, 2013 may cause the Director to initiate proceedings to invalidate the AFDA.

Please feel free to contact Jonathan Holmes of this office at (808) 961-8288 should you have any further questions and/or concerns.

Sincerely,


BJ LEITHEAD TODD
Planning Director

JRH/SHG:kwr

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Enclosures: AFDA document
AFDA document instruction sheet

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