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July 29, 2021

Kim Chiodo
Land Planning Hawaii LLC
194 Wiwoole Street
Hilo, HI 96720

Dear Kim Chiodo:

Additional Farm Dwelling Agreement (FDA-21-000513)

Applicant(s): Land Planning Hawaii LLC
Owner(s): The Robbi Sera Trust
State Land Use: Agricultural
County Zoning: Agricultural (A-5a)
Land Area: 5.363 acres
TMK: (3) 8-7-007:022 (COR-21-142148)

Pursuant to authority conferred to the Planning Director by Chapter 25 (Zoning), Article 5, Division 7, Section 25-5-77 of the Hawai'i County Code and Planning Department Rule 13, Farm Dwellings, we have reviewed your request for **one (1) additional farm dwelling ("AFD")** on the subject property and have **approved** your request subject to the following.

BACKGROUND INFORMATION

1. **Subject Property:** Pāhoehoe 1st to Ka'ōhe 3rd, South Kona, Hawai'i.
2. **Lot Size:** 5.363 acres, Lot 1.
3. **State Land Use:** Agricultural (A).
4. **County Zoning:** A-5a.
5. **Proposed Request:** One Additional Farm Dwelling.
6. **Existing Structures:** There are two unpermitted dwellings.
7. **Building Permits:** No building permit records were found on the subject parcel.

8. **Farm Plan:** Includes the following proposed income-producing agricultural activities.
 - a. **Existing and proposed expanded agricultural activities include:**
 - i. The existing agricultural activities, which include raising of chickens and growing of fruits and vegetables, are for personal consumption. The plan includes proposed income-producing agricultural activities that will expand the fruit orchard in two stages and plant additional banana plants on approximately 1.5 acres and additional dragon fruit on approximately 0.5 acres. The first stage of planting is anticipated to be completed within 3 years and includes planting banana plants on approximately 51,000 square feet of land area and dragon fruit on approximately 20,000 square feet. The second stage of planting is anticipated to be completed within 2 years following the completion of the first stage and includes planting banana plants on an additional 12,000 square feet of land area. Ultimately, the planned expansion is for the banana plants and dragon fruit to be planted on approximately 2 acres of the subject property with future labor hours averaging at 30 hours per week.
9. **Evidence of Agricultural Activity:** There is evidence of existing agricultural activity and proposed agricultural expenses reported with their application, evidence of General Excise Tax License, and invoices showing expenses related to planting the above crops.
10. **Rationale for Establishing AFD:** To provide living accommodations for an on-site farm caretaker who will assist with the farming activities associated with the proposed farm plan.

FINDINGS

1. 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 HRS Chapter 205-4.5, **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 subdivision lot was created by subdivision (SUB-04-000054) approved on January 6, 2016, which, 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 identified below:
 - a. Department of Water Supply (DWS) – No comments received as of this date.
 - b. Department of Health (DOH) – No comments received as of this date.
 - c. Department of Finance – Real Property Tax (RPT) – No comments received as of this date.

DECISION AND CONDITIONS

In view of the above, your request to construct **one (1) Additional Farm Dwelling** on the property is **approved** subject to the following conditions:

1. The AFD shall only be used for farm-related purposes and 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 additional 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 AFD Agreement must be returned to the Planning Department with the appropriate notarized signature(s) along with a check made out to the Bureau of Conveyances in the amount of **\$41.00** 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 sent for recordation by the Planning Department and recorded by the Bureau of Conveyances.**
4. The First Party (owners and their lessees and their successors in interest) shall comply with all other applicable rules, regulations, and requirements of the Planning Department (including but not limited to the Hawai'i County Code, Chapter 25, Zoning), 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.
5. Your Additional Farm Dwelling Agreement has been approved based on your proposed 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. It is recognized that the First Party (property**

- owners and lessees) to the Agreement shall have implemented at least 75% of the proposed farm plan within three (3) year of approval of the building permit for the additional farm dwelling. "Implementing" includes the planting and ground-rooted establishment of the proposed trees in a healthy, growing state.** The Second Party (County of Hawai'i Planning Department) to the Agreement may, in its sole discretion, allow time extensions and modifications for good cause shown by the First Party.
6. The First Party (owners and their lessees and their successors in interest) 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 unpermitted construction of the first farm dwelling on or before July 29, 2022.**
 8. This AFD shall be valid for a period of two (2) years from the date of this approval letter to secure a Building Permit (BP) for the AFD. **The First Party is required to secure a building permit from the Department of Public Works, Building Division, for the unpermitted construction of the second (additional) farm dwelling on or before July 29, 2023.** Failure to secure a BP for this AFD on or before **July 29, 2023**, may cause the Director to initiate proceedings to invalidate the AFD.
 9. An annual progress report shall be submitted to the Planning Director on or before **July 29, 2022** and shall include the status of complying with the conditions relating to building permits and the implementation of the proposed agricultural activities.
 10. The applicant is responsible for any State and Federal tax consequences due to the income produced from the farm activity.
 11. 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).

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Should any of these conditions not be met or substantially complied with in a timely fashion, the Planning Director may initiate procedures to revoke this permit.

Please feel free to contact Marie Hong of this office at (808) 323-4770 or email marie.hong@hawaiicounty.gov should you have any further questions and/or concerns.

Sincerely,



JEFFREY W. DARROW
Deputy Planning Director

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Enclosures: AFDA document
AFDA document instruction sheet

cc: Planning Inspector, Elizabeth Gillis (ZCV-2019-130W)
Chief Sanitarian, State of Haw. Dept. of Health
Manager-Chief Engineer, Haw. County Dept. of Water Supply
Lisa Miura, Administrator, Haw. County Real Property Tax Division
Lisa.Miura@hawaiicounty.gov

cc via email: GIS Section w/enclosures