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TRANSMITTAL

DATE: August 10, 2020

TO: State Land Use Commission
P.O. Box 2359
Honolulu, Hawai'i 96804



FROM:  Liza Osorio, Legal Technician I to
John Mukai, Deputy Corporation Counsel

RE: DR 20-69 – County Of Hawai'i's Second Supplemental Submission; Certificate of Service

<i>COPIES/ITEMS</i>	<i>DATE</i>	<i>DESCRIPTION</i>
Original and (1) copy	08-10-20	COUNTY OF HAWAII'S SECOND SUPPLEMENTAL SUBMISSION; CERTIFICATE OF SERVICE

TRANSMITTED FOR:

- | | |
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| <input type="checkbox"/> Your information and files | <input type="checkbox"/> Your approval |
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as noted below | <input type="checkbox"/> See remarks below |
| <input type="checkbox"/> Per your request | <input checked="" type="checkbox"/> Filing with the LUC |

REMARKS: Enclosed for filing is an original and one copy of the above referenced document. Should you have any questions with regard to the enclosed please do not hesitate to contact our office. Thank you.

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Attorneys for COUNTY OF HAWAII'I



BEFORE THE LAND USE COMMISSION

OF THE STATE OF HAWAII'I

In the Matter of the Petition of

COUNTY OF HAWAII'I, for a Declaratory
Order that "Farm Dwellings" May Not Be
Operated as Short Term Vacation Rentals
Under Hawai'i Revised Statutes §§ 205-2 and
204-4.5, and Hawai'i Administrative Rules §
15-15-25

In the Matter of the Petition of:

Linda K. Rosehill, Trustee of the Linda K.
Rosehill Trust dated August 29, 1989, as
amended; Thomas B. and Rea A. Wartman;
Mark A. Dahlman; Mark B. Chesebro and
Caroline Mitchel, Trustees of the First
Amendment and Restatement of the 1999
Mark Brendan Chesebro and Caroline Mitchel
Revocable Trust U/D/T dated January 6,
1999; Somtida S. Salim, Trustee of the
Somtida Salim Living Trust dated February
15, 2007; Todd M. Moses; Psalms 133 LLC;
John T. Fenton, Trustee of the John T. Fenton

DOCKET NOS. DR 20-69 &
DR 20-70

COUNTY OF HAWAII'I'S SECOND
SUPPLEMENTAL SUBMISSION;
CERTIFICATE OF SERVICE


Revocable Trust dated February 27, 2014; Frances T. Fenton, Trustee of the Frances t. Fenton Revocable Trust dated February 27, 2014; Donald J.K. and Stacey S. Olgado; Dirk and Laura Bellamy Hain, Trustees of the Bellamy-Hain Family Trust dated September 13, 2017; Peter A. Gunawan; Janti Sutedja; Neil Almstead; Doyle Land Partnership; James T. Kelnhofer; Charles E. and Nancy E. Rosebrook; Michael Cory and Eugenia Matson; Paul T. and Delayne M. Jennings, Trustees of the Jennings Family Revocable Trust dated January 5, 2010; Maggholm Properties LLC; Nettleton S. and Diane E. Payne, III

The County of Hawaii ("County"), by and through its undersigned attorneys, hereby submits its supplemental submission in support of its Petition for Declaratory Order dated August 10, 2020.

Dated: Hilo, Hawai'i, August 10, 2020

COUNTY OF HAWAI'I

By


JOHN S. MUKAI
Deputy Corporation Counsel
Its attorney

I. ARGUMENT

The County of Hawaii respectfully requests that under Hawaii law, farm dwellings must be used in connection with agriculture. Specifically, in support of and accessory to a farm or “farming operation”: “a commercial agricultural, silvicultural, or aquacultural facility or pursuit.” HRS § 165-2, 205-2, 205-4.5.

Although the Office of Planning, in their Supplemental Submission dated July 17, 2020, note that “If Petitioners were able and willing to provide facts demonstrating or acknowledging that their dwellings meet all of the STVR elements and at least one of the farm dwelling options, then the Commission could determine that Petitioners were properly operating their farm dwellings as STVRs pursuant to HRS § 205-4.5(a)(4)”, the County believes, in a scenario where vacation rentals are allowed on agriculturally zoned property, is exclusively governed by agricultural tourism.

The State Land Use Agricultural District allows one option for overnight accommodations (twenty-one days or less), which is under the provisions of agricultural tourism and must co-exist with a bona fide agricultural activity pursuant to HRS § 205-2(d)(12).

Neither the HRS nor the Hawaii County Code allows for short term rentals in the State Land Use Agriculture District unless it relates directly to and is in connection with agricultural tourism and agricultural activities, which sets forth a separate process under the HRS § 205-2(d)(11) and (12) and Hawaii County Code § 25-2-75 and § 25-4-15. These short-term overnight accommodations pursuant to agricultural tourism are separate and distinct from a the County’s code for Short-Term Vacation Rental. If the petitioners want to continue to pursue short-term overnight accommodations on the respective agriculture parcels, they must apply through and comply with the above referenced statues for agricultural tourism.

Although the Rosehill Petitioners have consistently ignored the use of a farm dwelling and have ignored details of Petitioners use in their submissions and argument, there is no evidence that their operation of farm dwellings as STVRs were ever legal. Hawaii law has always mandated that a farm dwelling be used in connection with a farm, which by definition is counter to purpose and intent of Short Term Vacation Rentals.

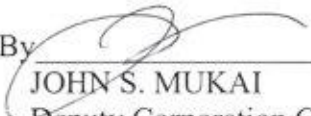
II. CONCLUSION

The County accordingly requests that the State Land Use Commission rule that farm dwellings may not be used as Short-Term Vacation Rentals pursuant to HRS §§ 205-2 and 205-4.5, and Hawaii Administrative Rules § 15-15-25.

Dated: Hilo, Hawai'i, July 9, 2020

COUNTY OF HAWAII

By



JOHN S. MUKAI
Deputy Corporation Counsel
Its attorney

BEFORE THE LAND USE COMMISSION

OF THE STATE OF HAWAII

In the Matter of the Petition of

COUNTY OF HAWAII, for a Declaratory Order that "Farm Dwellings" May Not Be Operated as Short Term Vacation Rentals Under Hawaii's Revised Statutes §§ 205-2 and 204-4.5, and Hawaii's Administrative Rules § 15-15-25

DOCKET NO. DR 20-69 &
DR 20-70

CERTIFICATE OF SERVICE

In the Matter of the Petition of:

Linda K. Rosehill, Trustee of the Linda K. Rosehill Trust dated August 29, 1989, as amended; Thomas B. and Rea A. Wartman; Mark A. Dahlman; Mark B. Chesebro and Caroline Mitchel, Trustees of the First Amendment and Restatement of the 1999 Mark Brendan Chesebro and Caroline Mitchel Revocable Trust U/D/T dated January 6, 1999; Somtida S. Salim, Trustee of the Somtida Salim Living Trust dated February 15, 2007; Todd M. Moses; Psalms 133 LLC; John T. Fenton, Trustee of the John T. Fenton Revocable Trust dated February 27, 2014; Frances T. Fenton, Trustee of the Frances t. Fenton Revocable Trust dated February 27, 2014; Donald J.K. and Stacey S. Olgado; Dirk and Laura Bellamy Hain, Trustees of the Bellamy-Hain Family Trust dated September 13, 2017; Peter A. Gunawan; Janti Sutedja; Neil Almstead; Doyle Land Partnership; James T. Kelnhofer; Charles E. and Nancy E. Rosebrook; Michael Cory and Eugenia Matson; Paul T. and Delayne M. Jennings, Trustees of the Jennings Family Revocable Trust dated January 5, 2010; Maggholm Properties LLC; Nettleton S. and Diane E. Payne, III

CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing was served upon the following by mailing the same, postage prepaid, on August 10, 2020:

Mary Alice Evans, Director
Office of Planning
P.O. Box 2359
Honolulu, Hawai'i 96804-2359

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MICHAEL YEE, Director
County of Hawai'i, Planning Department
Aupuni Center
101 Pauahi Street, Suite 3
Hilo, Hawai'i 96720

Dated: Hilo, Hawai'i, August 10, 2020.

COUNTY OF HAWAI'I

By 
JOHN S. MUKAI
Deputy Corporation Counsel
Its attorney