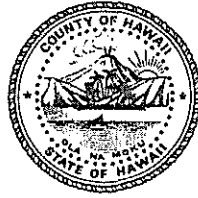


Harry Kim
Mayor



Christopher J. Yuen
Director

Roy R. Takemoto
Deputy Director

County of Hawaii

PLANNING DEPARTMENT

25 Aupuni Street, Room 109 • Hilo, Hawaii 96720-4252
(808) 961-8288 • Fax (808) 961-8742

May 14, 2001

Richard P. & Cindy L. Rog
2458 Buhne Street
Eureka, CA 95501

Dear Mr. & Mrs. Rog:

Additional Farm Dwelling Agreement

Applicants: Richard P. and Cindy L. Rog

Land Owners: Richard P. and Cindy L. Rog

Tax Map Key: (3) 5-5-002:005

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, including the additional information submitted with your application for a General Petition for Appeal of Decisions by Planning Director on January 31, 2001. Your submittals included the following information:

1. A notarized affidavit that the additional dwelling shall be used for farm-related purposes in the form of the proposed Additional Farm Dwelling Agreement.
2. Name and address of the landowner or lessee, if the latter has a lease on the building site with a term exceeding one year from the date of the farm dwelling agreement.
3. Written authorization of the landowner if the lessee filed the request.

Exhibit A

Richard P. & Cindy L. Rog
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May 14, 2001

4. 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 and proposed agricultural activities:
 - (a) CPR Unit I:
 - i. Approximately 1/3-acre existing vegetable and herb garden with approximately 71% of annual harvest for commercial sales;
 - ii. Proposed planting of 580 Christmas trees on approximately 1/3-acre for commercial purposes;
 - iii. A mixed fruit and nut orchard totaling approximately 1/3-acre of which 50% is existing citrus trees and 50% is proposed mixture of mango, lychee, etc. trees;
 - iv. Proposed planting of awa and various sensitive plants on approximately 1.5 acres in the gulch area of the property.
 - (b) CPR Unit II:
 - i. Pasturing of approximately three (3) head of cattle, two (2) dwarf goats, and one (1) mule for subsistence purposes on approximately 2.0 acres;
 - ii. Proposed planting and cultivation of cut flowers, heliconia, ginger, bromeliads, rare palms, mixed citrus and mango tree orchard, and shower trees for commercial purposes on approximately a 1.0 acre section in the gulch portion of the parcel.
5. In support, evidence of a State of Hawaii Department of Taxation's General Excise (GE ID Number 30122897) Tax License has also been presented.

Findings:

1. In Chapter 205, Hawaii Revised Statutes, 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 farm plan and the agreement to use the dwelling for agricultural or farm-related activity on the building site demonstrate that the proposed agricultural activity will be taxed.
3. In addition, the following agencies have submitted their comments as stated below:
 - (a) Department of Water Supply (Memorandum dated November 6, 2000):

“We have reviewed the subject application and have the following comments and conditions:

For your information, an existing 5/8-inch meter services this property and is adequate for only one dwelling at 600 gallons per day. This application is proposing an additional detached dwelling, so the installation of a separate 5/8-inch meter by the applicant is required in accordance with Department regulations. Water is available from the 6-inch waterline in Kynnersly Road, which fronts the subject parcel.

Therefore, the Department has no objections to the proposed application subject to the applicant understanding and accepting the following conditions:

1. Installation, by the Department of Water Supply, of a second 1-inch service lateral to service a 5/8-inch meter, which shall be restricted to a maximum daily flow of 600 gallons as the existing service is.

Richard P. & Cindy L. Rog

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May 14, 2001

2. Installation of a backflow preventer (reduced pressure type) by a licensed contractor on the applicant's property just after the meter. The installation and assembly of the backflow preventer must be inspected and approved by the Department before the water meter can be installed. The backflow preventer shall be operated and maintained by the customer. A copy of our backflow preventer handout is being forwarded to the applicant to help them understand this requirement.
3. Remittance of the following charges, which are subject to change, to our Customer Service Section:

a. Facilities Charge (One 2 nd service at \$3,375.00 each)	\$3,375.00
b. Service Lateral Installation Charge (Install one meter on Kynnersley Road, a County road) <u>+1,200.00</u>	
Total (Subject to Change)	\$4,575.00

Should there be any questions, please contact our Water Resources and Planning Branch at 961-8665."

(b) Real Property Tax Office (Memorandum dated November 20, 2000):

"There are no rollback tax consequences.

Real property taxes are paid through June 30, 2001."

(Letter dated November 21, 2000):

"This letter can be used as verification of the feasibility of pasture grazing on this land parcel. The Caitano family, prior owners, maintained this grass pasture parcel for many years with grazing animals.

The re-instating of pasture clearly meets the requirement for continued agricultural use of the land. I shall be field checking this land parcel on December 19, 2000, to verify the fencing and planned return of animals to the property.

Exhibit A

Richard P. & Cindy L. Rog
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Please let me know if I can be of further service in assisting with the application for the Additional Farm Dwelling Agreement.”

(c) Department of Health (Memorandum dated November 8, 2000):

“The subject lot(s) are located in a Non-Critical Wastewater Disposal Area where cesspools are allowed under the current rules. More than one cesspool is allowed provided 10,000 sq. ft. per cesspool is available. Each cesspool can dispose of 1,000 gallons per day of wastewater.”

Decision:

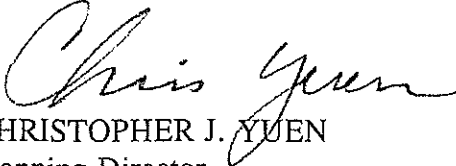
In view of the above, your request to construct a second farm dwelling is approved subject to the following conditions:

1. The second farm dwelling shall only be used to provide shelter for persons involved in the agricultural or farm-related activity on the building site.
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. 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.
4. Your Additional Farm Dwelling Agreement has been approved based primarily on proposed agricultural activity as summarized previously in this letter. It is required that the First Party (owners and lessees) to the Agreement shall have implemented at least 75% of the proposed farm plan within three (3) years of approval of the building permit for the additional farm dwelling. The Second Party (County of Hawaii Planning Department) to the Agreement may allow time extensions and modifications for good cause shown by First Party.
5. The First Party shall allow the Second Party or its representative to inspect the farm upon reasonable prior notice.

Richard P. & Cindy L. Rog
Page 6
May 14, 2001

Should you have questions or require further information, please feel free to contact Larry Brown of my staff at 961-8288.

Sincerely,



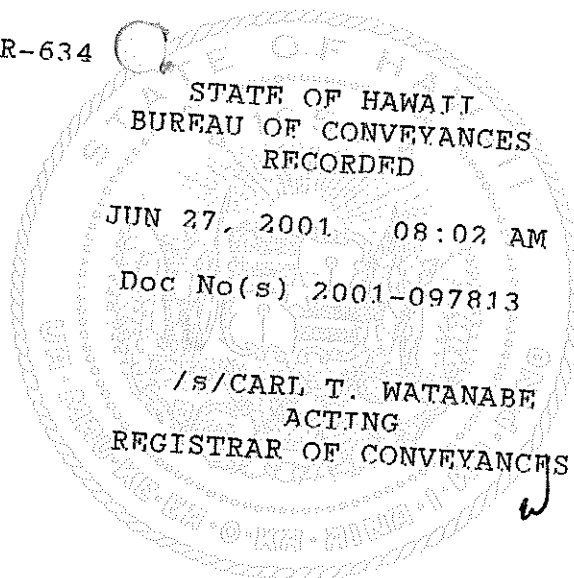
CHRISTOPHER J. YUEN
Planning Director

LMB:cps
P:\WPWIN60\Larry\FDA\Rog 5-5-2-5 apvi.doc

Enclosure

xc: Mr. Milton Pavao, DWS
Mr. Mike McCall, RPT
Planning Department - West Hawaii Office
Klaus D. Conventz -Baumeister Consulting

R-634



AFTER RECORDATION, RETURN BY MAIL TO:

County of Hawaii Planning Department
25 Aupuni Street, Room 109
Hilo, Hawaii 96720

TITLE OF DOCUMENT:

ADDITIONAL FARM DWELLING AGREEMENT

PARTIES TO DOCUMENT:

**FIRST PARTY: RICHARD P. ROG and CINDY L. ROG
ROBERT T. KELLEY and KATHERINE R. NEEL**

SECOND PARTY: COUNTY OF HAWAII

PROPERTY DESCRIPTION:

TMK: (3) 5-5-002:005

ADDITIONAL FARM DWELLING AGREEMENT

THIS AGREEMENT made and executed this 2nd day of May, 2001, by and between Richard P. Rog, Cindy L. Rog, Robert T. Kelley, and Katherine R. Neel herein called the "First Party," whose mailing address is 2458 Buhne Street, Eureka, CA 95501, and the COUNTY OF HAWAII, herein called the "Second Party."

IT IS HEREBY AGREED that the First Party may construct an additional farm dwelling located on the property described by Tax Map Key (3) 5-5-002:005 situated within the State Land Use Agricultural district and zoned Agricultural (A-20a) 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 an additional farm dwelling is given subject to the following conditions:

1. The additional farm dwelling shall be used to provide shelter only to person(s) involved in the agricultural or farm-related activity on the property.
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, Hawaii 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, Hawaii 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 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.

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

FIRST PARTY:

*See attachment
B.D. v.P.*

Richard P. Rog
Richard P. Rog, Legal Owner

Cindy L. Rog
Cindy L. Rog, Legal Owner

Robert T. Kelley
Robert T. Kelley, Legal Owner

Katherine R. Neel now known as Willow Rose Kelley
Katherine R. Neel, Legal Owner, *ADD KNOW AS
WILLOW ROSE KELLEY*

SECOND PARTY:

Chi Yuen
Christopher J. Yuen, Planning Director
County of Hawaii Planning Department

CALIFORNIA ALL-PURPOSE ACKNOWLEDGMENT

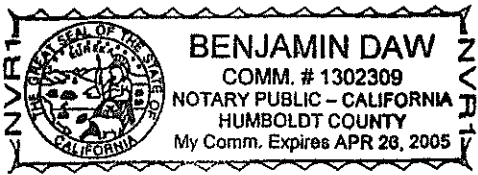
State of California }
County of Humboldt } ss.

On 05-19-01, before me, Benjamin Daw, Notary Public, #1302309
Date Name and Title of Officer (e.g., "Jane Doe, Notary Public")

personally appeared Richard P. Rog + Cindy L. Rog
Name(s) of Signer(s)

- personally known to me
- proved to me on the basis of satisfactory evidence

to be the person(s) whose name(s) ~~is~~ are subscribed to the within instrument and acknowledged to me that ~~he~~ she/they executed the same in ~~his~~ her/their authorized capacity(ies), and that by ~~his~~ her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.



WITNESS my hand and official seal.

Benjamin Daw
Signature of Notary Public

Place Notary Seal Above

OPTIONAL

Though the information below is not required by law, it may prove valuable to persons relying on the document and could prevent fraudulent removal and reattachment of this form to another document.

Description of Attached Document

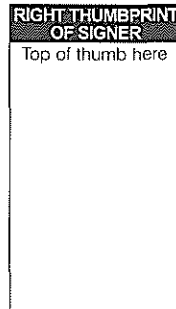
Title or Type of Document: Additional Farm Dwellng Agreement

Document Date: 5-2-01 Number of Pages: 5

Signer(s) Other Than Named Above: _____

Capacity(ies) Claimed by Signer

- Signer's Name: _____
- Individual
 - Corporate Officer — Title(s): _____
 - Partner — Limited General
 - Attorney in Fact
 - Trustee
 - Guardian or Conservator
 - Other: _____



Signer Is Representing: _____

STATE OF HAWAII)
) SS.
COUNTY OF HAWAII)

On this 14th day of June, 2001 before me ^{WRK}
personally appeared ~~RICHARD P. ROG, CINDY L. ROG, ROBERT T. KELLEY,~~ ^{Robert T. Kelley}
~~and KATHERINE R. NEEL,~~ ^{NOW KNOWN AS WILLOW ROSE KELLEY} to me known to be the person(s)
described in and who executed the foregoing instrument, and acknowledged that
~~they~~ ^{their} executed the same as ~~his~~ free act and deed.

8.F

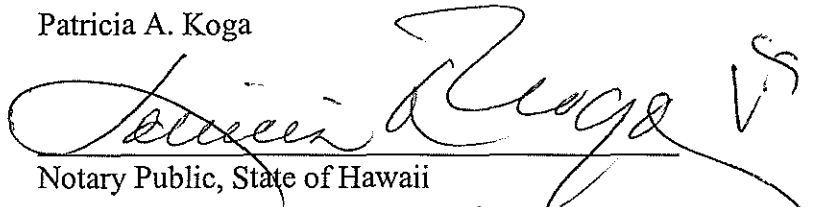
Mary Lou C. Ignacio Mary Lou C. Ignacio
Notary Public, State of HAWAII, 3rd circuit court

My commission expires: 8-28-2002

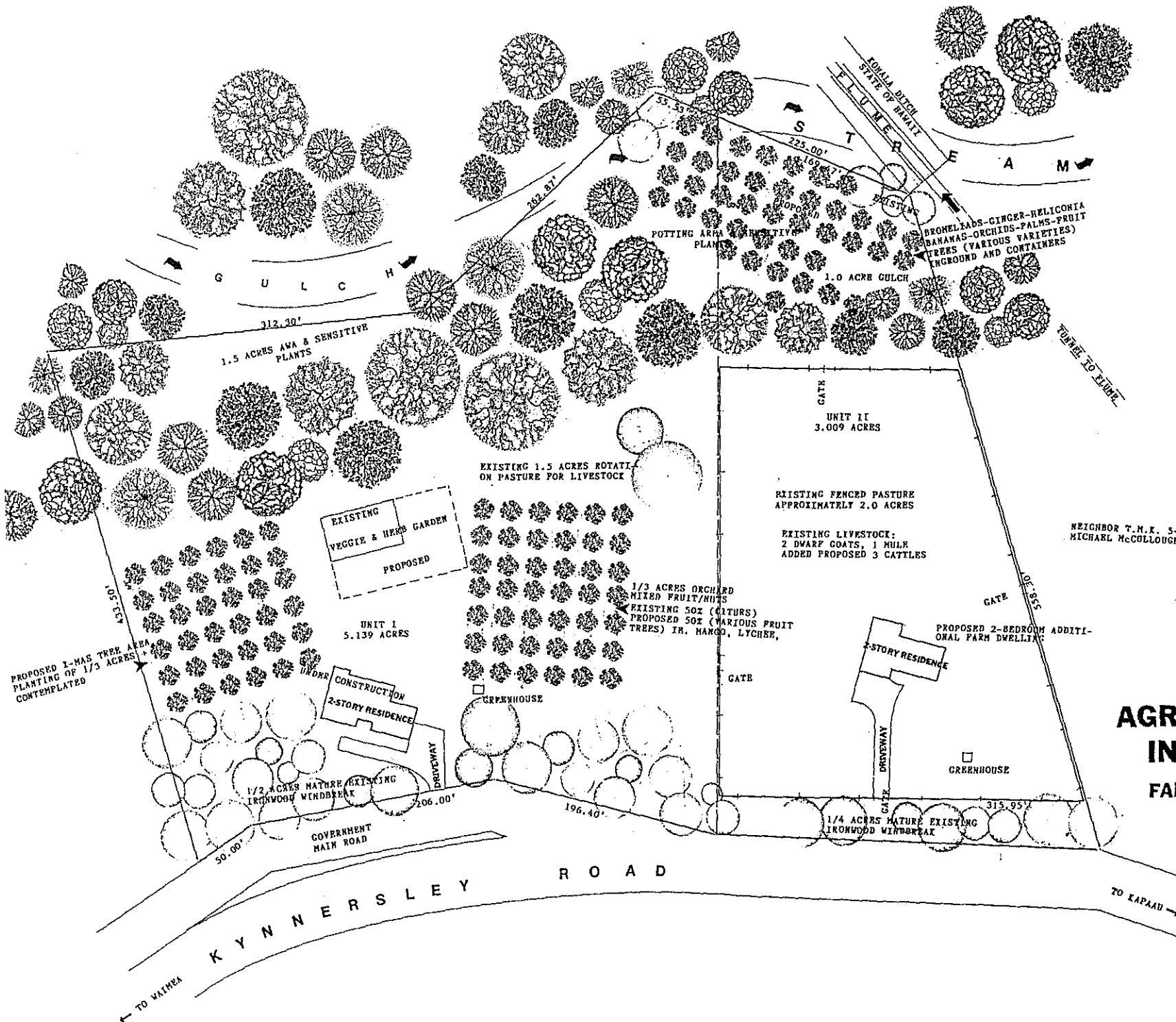
STATE OF HAWAII)
) SS
COUNTY OF HAWAII)

On this 20th day of June, 2001 before me personally appeared Christopher J. Yuen, to me personally known, who, being by me duly sworn, did say that he is the Planning Director of the County of Hawaii; 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 Christopher J. Yuen acknowledged the instrument to be the free act and deed of said Planning Department, County of Hawaii.

Patricia A. Koga


Notary Public, State of Hawaii

My commission expires: 7/17/02



1" - 50'



PROPOSED
**AGRICULTURAL
 INVENTORY**
 FARM & NURSERY

OWNER:

RICHARD & CINDY ROG
 T.M.K.: 5-5-2-5-2
 UNIT II
 ROBERT KELLEY
 T.M.K.: 5-5-2-5-1
 UNIT I