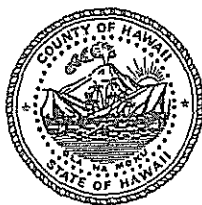


Harry Kim
Mayor



Christopher J. Yuen
Director

Roy R. Takemoto
Deputy Director

County of Hawaii

PLANNING DEPARTMENT

101 Pauahi Street, Suite 3 • Hilo, Hawaii 96720-3043
(808) 961-8288 • Fax (808) 961-8742

April 19, 2005

Mr. Louis A. and Mrs. Joleen M. Nobriga
P.O. Box 72
Laupahoehoe, Hawaii 96764

Dear Mr. and Mrs. Nobriga:

SUBJECT: Additional Farm Dwelling Agreement (2004-0038)
Applicants: Louis A. and Joleen M. Nobriga
Land Owners: Louis A. and Joleen M. Nobriga
State Land Use: Agricultural
County Zoning: A-20a
Land Area: 1.869 Acres
Tax Map Key: (3) 3-5-005-012

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 signatures of the landowners.
2. 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 income producing agricultural activities:

Hawai'i County is an equal opportunity provider and employer.

EXHIBIT

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Mr. Louis A. and Mrs. Joleen M. Nobriga
Page 2
April 19, 2005

(a) Ongoing agricultural activities include:

- i. There is a 12,960 sq.ft. poultry area that supplies the family with eggs and meat.
- ii. The parcel has been fenced and cross-fenced for raising goats. The applicant presently has a goat operation on a separate parcel with many head. Initially, there will be 4 to 6 goats with kids on this property.
- iii. Approximately 24,303 sq.ft. is being prepared for noni fruit growing. The applicant also has a successful noni fruit operation on another parcel in the Laupahoehoe area.

(b) Proposed agricultural activities include:

- i. Planting of the noni fruit and expansion of the goat operation.

(c) Combined labor man-hours are anticipated to be at least 40 per week.

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, 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.** (emphasis added)
2. The subject lot was created prior to June 4, 1976, which, pursuant to HRS §205-4.5(b), allows the first dwelling on the lot to be a single-family dwelling.
3. The Farm Plan, G.E. Tax license (#30053907) and the agreement to use the dwelling for agricultural or farm-related activity on the building site demonstrate that there will be income producing agricultural activity and that the income will be taxed.
4. In addition, the following agencies have submitted their comments as stated below:

EXHIBIT

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Mr. Louis A. and Mrs. Joleen M. Nobriga
Page 3
April 19, 2005

(a) Department of Water Supply (DWS) (Letter dated March 11, 2005):

"We have reviewed the revised subject application; and our comments and conditions of our October 25, 2005, memorandum to you remain the same and are shown below.

For your information, an existing 5/8-inch meter services this property and is adequate for only one dwelling at an average of 400 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 the Department's regulations. Water is available from the 6-inch waterline in Hokumahoe Road fronting the subject property.

Therefore, the Department has no objection 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 per day.
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:

FACILITIES CHARGE (FC):

(One 2nd service @ \$5,500.00 each) \$5,500.00

SERVICE LATERAL INSTALLATION CHARGE:

(Install one meter on Hokumahoe Road, a County road) 2,600.00

Total (Subject to Change) \$8,100.00

Should there be any questions, please call Ms. Shari Komata of our Water Resources and Planning Branch at 961-8070, extension 252."

EXHIBIT

A

Mr. Louis A. and Mrs. Joleen M. Nobriga

Page 4

April 19, 2005

(b) Real Property Tax Office (RPT):

The RPT office did not respond to this application as of this date.

(c) Department of Health (DOH) (Memorandum dated March 17, 2005):

“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.”

Decision:

In view of the above, your request to construct a **second (first AFD) 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. The enclosed Additional Farm Dwelling 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 \$25.00 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 and all required attachments have been accepted for recordation.

3. 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.

EXHIBIT

A

Mr. Louis A. and Mrs. Joleen M. Nobriga

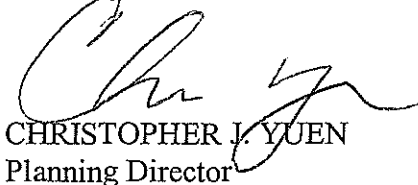
Page 5

April 19, 2005

4. Your Additional Farm Dwelling Agreement has been approved based largely 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) of 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.
6. This Additional Farm Dwelling Agreement shall be valid for a period of two (2) years from the date of this approval letter. The applicant must secure a building permit for the additional farm dwelling within that time. Failure to secure a building permit for this additional farm dwelling on or before April 5, 2007 may cause the Director to initiate proceedings to invalidate the AFDA.

Should you have any questions, please contact Jonathan Holmes of this office.

Sincerely,



CHRISTOPHER J. YUEN
Planning Director

JRH:cd

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Enclosures: AFDA document
AFDA document instruction sheet

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

EXHIBIT

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THE ORIGINAL OF THE DOCUMENT
RECORDED AS FOLLOWS:
STATE OF HAWAII
BUREAU OF CONVEYANCES
DATE _____ TIME _____
DOCUMENT NO. Doc 2006-086018
MAY 08, 2006 08:02 AM

AFTER RECORDATION, RETURN BY MAIL TO:

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

TITLE OF DOCUMENT:

ADDITIONAL FARM DWELLING AGREEMENT

PARTIES TO DOCUMENT:

FIRST PARTY: LOUIS A. NOBRIGA, JOLEEN M. NOBRIGA

SECOND PARTY: COUNTY OF HAWAII

PROPERTY DESCRIPTION:

TMK: (3) 3-5-005:012-0002

ADDITIONAL FARM DWELLING AGREEMENT

THIS AGREEMENT made and executed this 4th day of April 2005, by and between **LOUIS A. NOBRIGA, JOLEEN M. NOBRIGA and RUSSELL HASLAM JR.**, herein called the "First Party," whose mailing address is P.O. Box 72, Laupahoehoe, Hawaii 96764 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) 3-5-005:012-0002 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 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, 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.

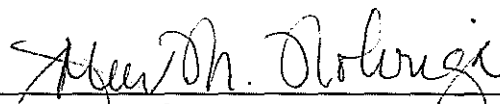
IN CONSIDERATION OF THE AFORESAID, the Second Party hereby approves this Agreement as being in conformity with Sections 205-2 and 205-4.5 of the Hawaii Revised Statutes, relative to permitted uses within the State Land Use Agricultural district. This Agreement is also in conformance with Chapter 25,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

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

FIRST PARTY:




LOUIS A. NOBRIGA, Legal Owner



JOLEEN M. NOBRIGA, Legal Owner

SECOND PARTY:



CHRISTOPHER J. YUEN, Planning Director
County of Hawaii Planning Department

STATE OF HAWAII

)

) SS.

COUNTY OF HAWAII

)

On this 27th day of February, 2006 before me personally appeared **LOUIS A. NOBRIGA, JOLEEN M. NOBRIGA**, 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.

DERWIN R. IGNACIO *Der R. Ignacio*
Notary Public, State of Hawaii *L.S.*

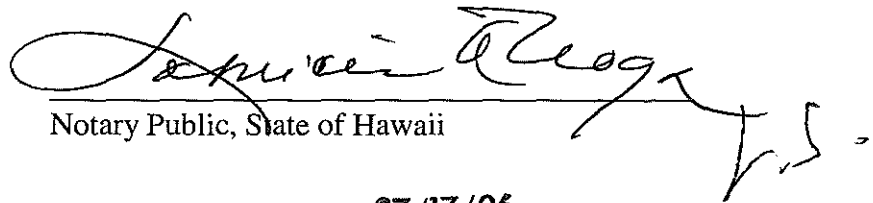
My commission expires: 02-19-08

STATE OF HAWAII)
) SS
COUNTY OF HAWAII)

On this 2nd day of May, 2006 before me personally appeared

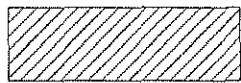
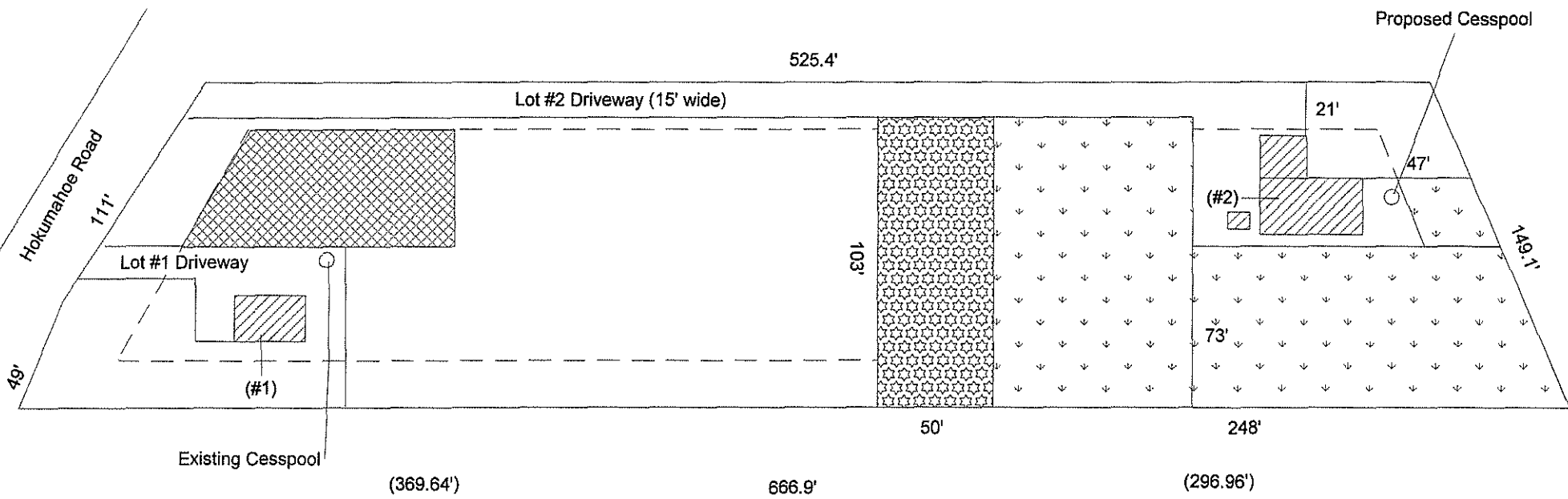
CHRISTOPHER J. YUEN, to me personally known, who, being by me duly sworn, did say that he is the Planning Director of the County of Hawaii; and that the Planning Department of the County of Hawaii has no corporate seal; and that the instrument was signed on behalf of the Planning Department of the County 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: 07/17/06



Dwellings

Farm Dwelling #1 - 912 sq. ft.

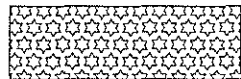
Proposed Additional Farm Dwelling (#2) - 1250 sq. ft.



Poultry (existing poultry project on lot #1) - 600 sq. ft.



Noni (proposed noni project on lot #2) - 20,235 sq. ft.



Goats (proposed goat project on lot #2) - 5150 sq. ft.