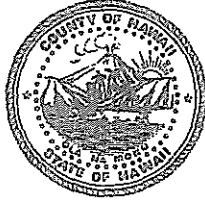


William Kenoi  
Mayor



Daryn S Arai  
Acting Planning Director

## County of Hawaii

### PLANNING DEPARTMENT

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

January 8, 2009

Normand Du Fresne and  
Kelly King  
P.O. Box 587  
Pahoa, Hawaii 96778

Dear Mr. Du Fresne and Mr. King:

**SUBJECT:** Additional Farm Dwelling Agreement (FDA-08-000232)  
**Applicant:** Normand Du Fresne and  
Kelly King  
**Land Owner:** Normand Du Fresne and  
Kelly King  
**State Land Use:** Agricultural  
**County Zoning:** A-20a  
**Land Area:** 69 Acres  
**Tax Map Key:** (3) 1-3-001:026

---

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 AFD is needed in connection with the agricultural productivity or farming operation. Your farm plan included the following ongoing income producing agricultural activities:
  - a. Ongoing agricultural activities include the following:

Normand Du Fresne and  
Kelly King  
Page 2  
January 8, 2009

- i. The property is dedicated to agricultural use through the Real Property Tax Division;
  - ii. The activity involves growing of bananas, Avocados, Mangos, Coffee Noni, Papayas, Rose apples, Ginger and Macadamia Nuts over at least 10 acres of land;
  - iii. Approximately 94 hours per week are required for running the farm; and
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 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 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):

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

Please be informed that the subject parcel does not have an existing water

Normand Du Fresne and  
Kelly King  
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service with the Department as the parcel is beyond the service limits of the Department's existing water system.

Should there be any questions, you may contact Mr. Ryan Quitarano of our Water Resources and Planning Branch at 961-8070, extension 256."

b. Department of Health (DOH):

"The Department of Health's Safe Drinking Water Branch authority on drinking water quality is based on the definition of a "public water system." A "public water system" means a system which provides water for human consumption through pipe or other constructed conveyance if such system has (15) service connections or regularly serves an average of at least twenty-five (25) individuals daily at least sixty (60) days out of the year. All public water systems are regulated by the Department of Health and shall be in compliance with the Hawaii Administrative Rules, Title 11, Chapter 20. Recommend the subdivision lots be connected to an existing public water system.

Concerns on water quality for lead, copper, algae and microbiological and chemical contaminations in private water systems have identified the need for self monitoring. The Department of Health does not support the use of these private rain catchment systems for drinking purposes since the quality may not meet potable water standards.

We recommend that you review all of the Standard Comments on our website: [www.state.hi.us/health/environmental/env-planning/landuse/landuse.htm](http://www.state.hi.us/health/environmental/env-planning/landuse/landuse.htm). Any comments specifically applicable to this project should be adhered to.

The use of individual wastewater systems is allowed. The type and number of individual wastewater systems 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 an **Additional Farm Dwelling** 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

Normand Du Fresne and  
Kelly King  
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January 8, 2009

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 \$25.00 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 incomes produced from the farm activity.
5. Your AFDA has been approved based on ongoing 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. 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 November 30, 2010 may cause the Director to initiate proceedings to invalidate the AFDA.

Normand Du Fresne and  
Kelly King  
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January 8, 2009

Please feel free to contact Larry Nakayama of this office at 961-8288 should you have any further questions and/or concerns.

Sincerely,



DARYN S. ARAI  
Acting Planning Director

LN/JG;jlh  
O:\AFDA\AFDALHN\Approvals\DuFresneKing-Aprvl.doc

Enclosures: AFDA document  
AFDA document instruction sheet

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

AFTER RECORDATION, RETURN BY MAIL TO:

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

NAME OF DOCUMENT:

**ADDITIONAL FARM DWELLING AGREEMENT**

PARTIES TO DOCUMENT:

**FIRST PARTY: NORMAND DU FRESNE AND KELLY KING**

**SECOND PARTY: COUNTY OF HAWAII**

PROPERTY DESCRIPTION:

**TMK: (3) 1-3-001:026**

ADDITIONAL FARM DWELLING AGREEMENT

THIS AGREEMENT made and executed this 28th day of November, 2008, by and between **NORMAND DU FRESNE AND KELLY KING**, herein called the "First Party," whose mailing address is P.O. Box 587, Pahoa, Hawaii 96778, and the COUNTY OF HAWAII, herein called the "Second Party."

IT IS HEREBY AGREED that the First Party may construct a farm dwelling located on the property described by Tax Map Key (3) 1-3-001:026 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.

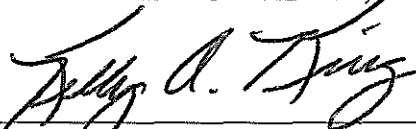
IN CONSIDERATION OF THE AFORESAID, the Second Party hereby approves this Agreement as being in conformity with Sections 205-2 and 205-4.5 of the Hawaii Revised Statutes, relative to permitted uses within the State Land Use Agricultural district. This Agreement is also in conformance with Chapter 25,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




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

FIRST PARTY:

  
NORMAND DU FRESNE, Legal Owner

  
KELLY KING, Legal Owner

SECOND PARTY:

  
Acting Deputy, BJ LEITHEAD TODD  
Planning Director  
County of Hawaii Planning Department

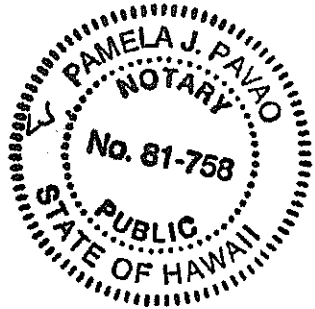
STATE OF HAWAII )

COUNTY OF HAWAII )

) SS.  
)

On this 21<sup>st</sup> day of January, 2009, before me the undersigned notary public, personally appeared, Normand Duprene personally known or proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) ( is / are ) subscribed to this instrument, and acknowledged that ( he / she / they ) executed it.

NOTARY CERTIFICATION: This 6 page Additional Farm Dwelling Agreement dated 16.1.09 was subscribed and sworn to before me this 21<sup>st</sup> day of January 2009, in the Third Judicial Circuit of the State of Hawaii, by Pamela J. Pavao.



Witness My Hand and Official Seal

Pamela J. Pavao  
PAMELA J. PAVAO

Notary Public, State of Hawaii. Third Judicial Circuit

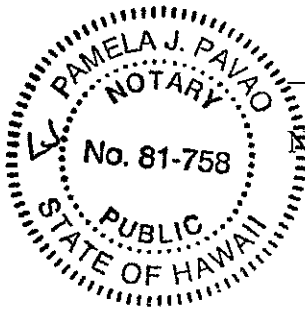
My Commission Expires: 9/24/2009

STATE OF HAWAII )  
 ) SS.  
COUNTY OF HAWAII )

np  
rip

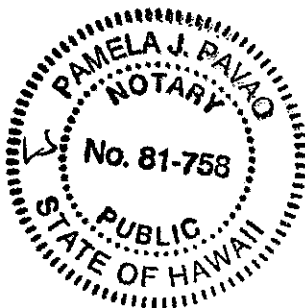
On this 28<sup>th</sup> day of January, ~~2008~~ <sup>2009</sup> before me personally  
appeared ~~NORMAND DU FRESNE~~ and KELLY KING to me known to be the  
persons described in and who executed the foregoing instrument, and acknowledged  
that ~~they~~ <sup>he</sup> executed the same as ~~their~~ <sup>his</sup> free act and deed.

np  
rip



Pamela J. Pavao  
Notary Public, State of Hawaii

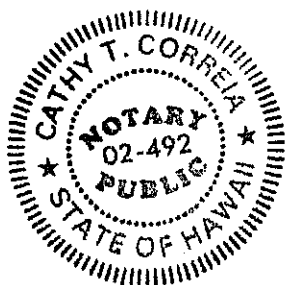
My commission expires: 9/24/2009



Doc. Date: 1/28/09 # Pages: 6  
Notary Name: Pamela J. Pavao 2nd Circuit  
Doc. Description: Additional Farm Dwelling Agreement  
Pamela J. Pavao 1/28/09  
Notary Signature Date

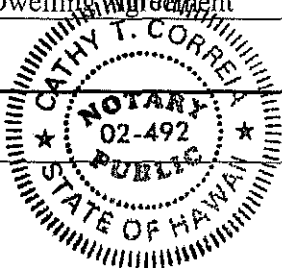
STATE OF HAWAII )  
 ) SS.  
 COUNTY OF HAWAII )

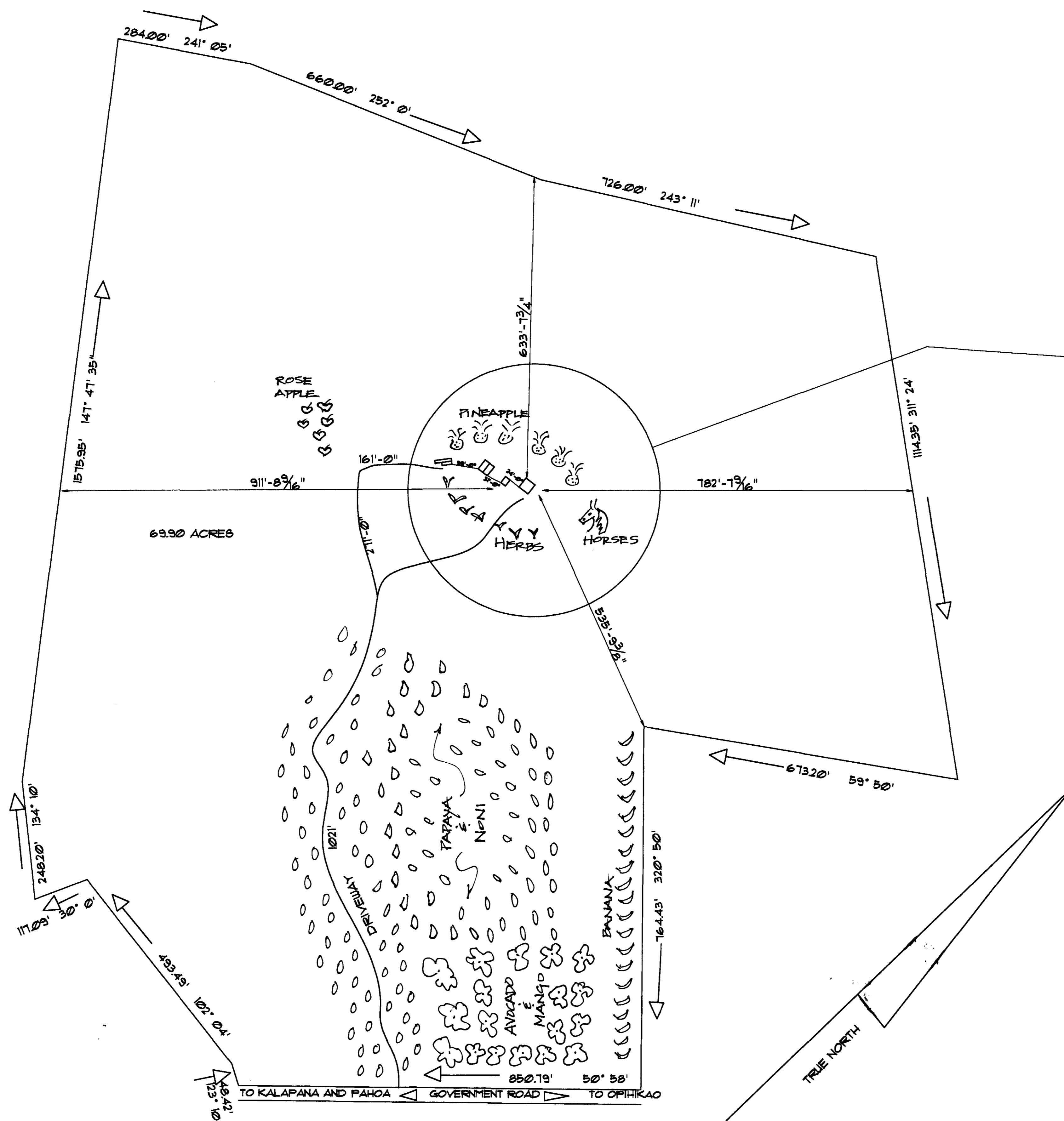
On February 4, 2009, before me personally appeared BJ Leithead Todd, to me personally known, who, being by me duly sworn, did say that BJ Leithead Todd is the Acting Deputy Planning Director of the County of Hawai'i, and that the Planning Department of the County of Hawaii has no corporate seal; and that the instrument was signed on behalf of the Planning Department of the County of Hawaii, a government agency, and said BJ Leithead Todd acknowledged the instrument to be the free act and deed of said Planning Department, County of Hawaii.



*Cathy T. Correia*  
 \_\_\_\_\_  
 Cathy T. Correia  
 Notary Public, State of Hawai'i  
 My Commission Expires: 10-13-2010

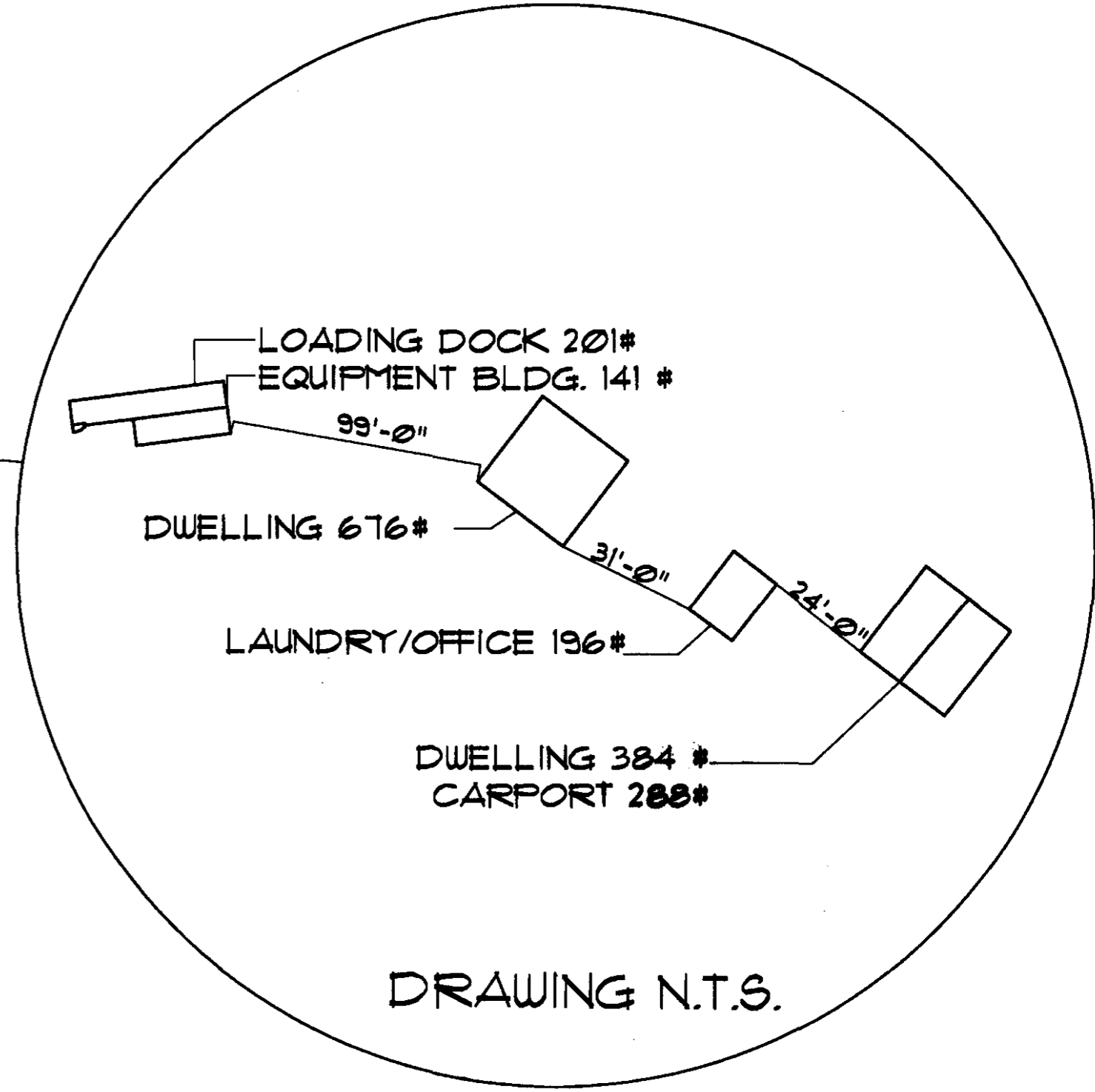
Doc. Date: <u>November 28, 2008</u>	# Pages: <u>6</u>
Notary Name: Cathy T. Correia	Third Circuit
Doc. Description: <u>Additional Farm Dwelling Attachment</u>	
<i>Cathy T. Correia</i> Notary Signature	February 4, 2009 Date





69.90 ACRES

SITE PLAN  
SCALE: 1/8" = 1'-0"



**PROJECT DATA**  
 AS BUILT EQUIPMENT BUILDING  
 OWNER: KELLY ANDREW KING  
 / NORMAND DUFRESNE TRUST  
 MAILING ADDRESS: POST OFFICE BOX 587  
 PAHOA, HAWAII 96778  
 TMK: 1-3-001:026  
 ADDRESS: 13-790 KAMAII ROAD  
 AREA: 69.90 Acres  
 Equipment Building - 141 #  
 Loading Dock - 20 #

AS BUILT EQUIPMENT BUILDING FOR  
 KELLY A. KING & NORMAND DUFRESNE  
 BLUE WATER PROJECT MANAGEMENT  
 CATHY DUMOND  
 808-965-9261  
 DRAWN BY: ELIZABETH LOGSDON WE DRAW PLANS 987-7706  
 MAY 28, 2007

<b>SITE PLAN</b>	SHEET NUMBER
SCALE: AS NOTED	1
	OF 2 SHEETS