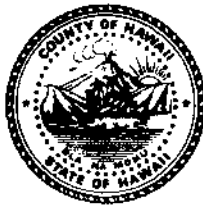


Mitchell D. Roth  
Mayor

Lee E. Lord  
Managing Director

West Hawai'i Office  
74-5044 Ane Keohokalole Hwy  
Kailua-Kona, Hawai'i 96740  
Phone (808) 323-4770  
Fax (808) 327-3563



**County of Hawai'i**  
**PLANNING DEPARTMENT**

Zendo Kern  
Director

Jeffrey W. Darrow  
Deputy Director

East Hawai'i Office  
101 Pauahi Street, Suite 3  
Hilo, Hawai'i 96720  
Phone (808) 961-8288  
Fax (808) 961-8742

February 2, 2021

Mrs. Tram Ngo  
Mr. Chanh Nguyen  
2357 Kīlauea Ave.  
Hilo, HI 96720-8151

Dear Mrs. Ngo & Mr. Nguyen:

**SUBJECT: Application: RECONSIDERATION OF DENIAL OF ADDITIONAL FARM DWELLING AGREEMENT (FDA-19-000470)**  
**Applicant: Hawai'i Red Fruits, LLC**  
**Land Owners: Tram Ngo & Chanh Nguyen**  
**Location: por. of Royal Patent Grant 34, La'imi, S. Hilo, Hawai'i Island**  
**Tax Map Key: (3) 2-8-012: 014**

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A written request to the Planning Director for reconsideration of the subject denied Additional Farm Dwelling Application was received from Planning Consultant, Sidney Fuke on September 23, 2020. In the request for reconsideration, additional information was submitted.

The application request was reconsidered for parcel 14 according to the following four state and county laws that regulate Farm Dwellings (FDs) and Additional Farm Dwellings (AFDs) in Hawai'i County: Hawai'i Revised Statutes (HRS) Chapters 205 and 165, the Hawai'i County Zoning Code Chapter 25, and the County of Hawai'i Planning Department Rule 13.

In accordance with the above-referenced authority, the Planning Director's reconsideration of the new information along with the below stated background information and findings, the request is **approved** for the proposed two dwellings: the first farm dwelling (FD) (in numerical order, dwelling 2) and the Additional Farm Dwelling (AFD) (in numerical order, dwelling 3).

**Determination: 3 Dwellings on parcel 14.** The Planning Director's determination concluded that the Ngo and Nguyen application for the parcel (par.) 14 building site will involve three (3) dwellings (Note: For the purpose of the determination, dwelling means 'single-family dwelling,' discussed below in the Findings at p. 4 for Finding # 10):

- **Dwelling 1: First Residential Non-Farm Dwelling.** The applicants and their planning consultant submitted information and an explanation (Fuke Letter [September 23, 2020]) that identified the correct structure for the dwelling 1 status:

The dwelling on parcel 14 is the 2013 'AS BUILT' dwelling. In 2013, it was approved and identified as a first 'FARM DWELLING' on Building Permit (BP), #2013-00265 (the BP record notes that the permit is not completed; it remains open in 'Issued' status).

**Correction:** Dwelling 1 is the first dwelling on parcel 14. Although the BP identified the 2013 'AS BUILT' dwelling as the first 'FARM DWELLING' – it is determined to have been incorrectly designated. Dwelling 1 is not a first farm dwelling; instead, it qualifies as the first residential non-farm dwelling. Therefore, it is not subject to the ag income and commercial farming statutory standards of Hawai'i Revised Statutes (HRS) sections (secs.) 205-4.5 (a)(4) and 165-2.

These statutory standards do not apply to parcel 14 because it is a legal lot of record created in 1847 and confirmed by Planning Director's Pre-existing Lot Determination Letter (December 3, 1996) (see below, Background Information #5). Essentially, parcel 14 existed before the statutory standards of farm dwellings and commercial agriculture became effective decades later, on June 4, 1976. Therefore, according to HRS sec. 205-4.5 (b), when a lot is classified in the State Land Use Agricultural District, such as parcel 14, residential non-farm dwellings are permitted on lots existing before June 4, 1976.

**Reconsideration & New Information.** The initial denial (September 17, 2020) was based on an error because of an existing 2002 residential dwelling (BP #020155 / Acosta). This error arose because county Building Permit (BP) records report that the 2002 dwelling is built on two lots: par. 14 and also on par. 34 (TMK: 2-8-12:034 / Acosta). Each lot's respective online county Real Property Tax (RPT) record shows the 2002 dwelling as a completed BP; as a result, it gave the impression that par. 14 had an additional dwelling in its total dwelling count. The discrepancy was found in the project address of the 2002 dwelling: par. 14 has a different street address number from the actual project address location of the 2002 dwelling (BP #020155 / Acosta). The 2002 dwelling is built on par. 34/Acosta – and not on par. 14, owned by Ngo and Nguyen, the landowner-applicants.

Par. 34 is one of the lots confirmed by the above 1996 pre-existing lot determination along with par. 14; both lots were once one parcel until the pre-existing lot determination enabled the lots to be assigned separate respective TMK parcel numbers.

The project address confirmed that the 2002 dwelling was built in the lot area that became par. 34 and that it is not located in the area that is par. 14.

- **Dwelling 2: First Farm Dwelling.**  
For par. 14, Dwelling 2, is the first farm dwelling and qualifies for the 'Farm Dwelling Notice' (document revised: 2/18/14). A Farm Dwelling Notice is required for the first farm dwelling. Planning Department Rule13-4 (c).
- **Dwelling 3 is the one AFD proposed for parcel 14.** According to the application statement, the dwelling is for the applicant-landowners to live and work on the farm; and, for family members who would also participate in the farming operation. Dwelling 3 qualifies for the status of the Additional Farm Dwelling Agreement (the AFD).

Therefore, par. 14, qualifies for three dwellings: Dwelling 1, the residential non-farm dwelling; Dwelling 2, the first farm dwelling with a Farm Dwelling Notice; and, Dwelling 3, the AFD with the AFDA.

**Farm Income.** Farm sales income has been generated for the three tax reporting years of 2015-16-17, with additional material information provided to document and substantiate farm income for 2018 and 2019.

### **BACKGROUND INFORMATION**

1. **Subject Property:** **TMK: 2-8-012: parcel 014**, at location address, 28-3377 Hawai'i Belt Road; being a portion of Royal Patent Grant No. 34, La'imi, S. Hilo, Hawai'i Island.
2. **Lot Size:** 34.5810 acres.  
Parcel 14 has been determined to be a pre-existing lot, according to the Planning Director's Determination of Pre-Existing Lots (December 3, 1996). See below, Background #5.
3. **Landowners:** Tram Ngo, fee owner; and, Chanh Nguyen, fee owner, tenants by the entirety, as disclosed by the landowner-applicants. The applicants' land ownership is confirmed by two sources of public information: the online parcel information records of the County of Hawai'i Real Property Tax (**RPT**) Division and parcel 14's County of Hawai'i Parcel History (or county parcel history sheets).
4. **State Land Use: Agricultural (A) and County Zoning: A-20a** (Agricultural 20 acres).  
Background Information #4 confirm that parcel 14 is classified in state and county Agricultural land use.
5. **Legal Lot of Record: Royal Patent Grant No. 34 (1847) & Planning Director's (Goldstein) Determination of Pre-Existing Lots (December 3, 1996).** Generally, parcel 14, received the above-referenced 1996 pre-existing lot determination. This parcel was determined to originate from a portion of Royal Patent Grant No. 34 (August 16, 1847). The records confirm that parcel 14 is a legal lot of record created in 1847, before June 4, 1976.

6. **Existing Farm Operation & Proposed Improvements Site Plan.** Ngo and Nguyen submitted the described site plan of parcel 14 to document the existing and proposed orchard expansion, existing Dwelling 1 and ag structures, and the proposed location of the requested two AFDs, Dwellings 2 and 3.
7. **Existing Farming Operation: Commercial Fruit Orchard Farm.** For about the past four years (approximately, 2015 to 2019), Ngo and Nguyen represent that their Hawai'i Red Fruits, LLC, have cleared and cultivated parcel 14 into an existing commercial fruit tree orchard farm business. Approximately 26 acres are planted in fruit crop: lychee, rambutan, mango, longon, jackfruit, and miscellaneous. The application's narrative at 'Agricultural Program' (p. 2) states two lists: the first is the 'existing' approximate fruit tree acreage by crop; the second list, states the 'additional' acreage for a proposed 6-acre orchard expansion of selected fruit tree crops: lychee, rambutan, and mango. Therefore, the existing 26-acre orchard is proposed to be expanded to 32 acres.
8. **County Real Property Tax (RPT) Agricultural Assessment Information.** The county RPT Division's official 'Land Information' assessment of parcel 14 confirms that this lot is in the Agricultural property class for agricultural usage, production, and value.

RPT Division's online parcel information of parcel 14 states the property's 'Agricultural Assessment Information:'

- the Property Class is assessed in 'Agricultural;'
- 'Acres in Production' is assessed at 32.123 acres and 2.458 acres;
- the 'Agricultural Value' is respectively assigned at \$96,369 for the former acreage; and, \$100 is assigned to the latter acreage.

In evaluating parcel 14's AFDA application, although RPT's agricultural assessment information is not required for an AFDA application, the county's official 'Land Information' assessment support and substantiates parcel 14's agricultural activity.

9. **Commercial Agricultural - Fruit Orchard Farming Operation.** To document the commercial farm operation of Hawai'i Red Fruits, LLC, Ngo and Nguyen, have on record a copy of their State of Hawai'i General Excise Tax License (confirming the business start date: June 18, 2013) (Figure 4); a copy of their federal IRS Employer Identification Number (EIN) (Figure 3); and, copies of their Schedule F (Form 1040) Profit or Loss from Farming for 2015, 2016, 2017, 2018, and 2019. Five years of past farm sales income (as well as farm expenses) from fruits and nuts are reported for the respective filing period:

2015 farm sales income: \$23,200.  
2016 farm sales income: \$8,200.  
2017 farm sales income: \$14,822

2018 farm sales income: \$12,096.  
2019 farm sales income: \$12,050.

The submitted documentation constitutes evidence of farm sales income for 2015 through 2019 that support the Ngo and Nguyen application for one AFD.

#### **One County Dwelling BP Approved for Parcel 14**

For this determination, the reference to dwelling means “Dwelling” as defined by the following three state and county laws: the State of Hawai‘i Land Use Commission Haw. Administrative Rule section (sec.) 15-15-03; secondly, as that term is also defined in the Haw. County Zoning Code sec. 25-1-5 (b), definitions of “Dwelling,” “Dwelling unit,” and “Single-family dwelling;” and finally, as defined in Planning Department Rule 13-3 (b), ‘Farm dwelling.’

10. **Dwelling 1: 2013 (BP #: BH2013-00265) One Existing Residential Non-Farm Dwelling.** RP Tax (RPT) Division BP records, the application’s statement (at pp. 1 and 3), and the submitted farm site plan, the ‘Existing Farm and Farm Plan,’ these materials confirm that on parcel 14 there is one existing residential dwelling; and, in numerical order, Dwelling 1 is the first dwelling on parcel 14.:

- **Dwelling 1.**

Online county RPT records confirm that the above-referenced BP was approved for the existing Dwelling 1.

Dwelling 1 is a residential dwelling with no requirement for a farming operation of agricultural activity and agricultural income to the family occupying the farm dwelling. However, Dwelling 1 is currently occupied by a farm employee family of the landowner-applicants and who will continue to occupy the residence.

The Planning Department observes the pre-1976 vs. post-1976 lot creation distinction of Hawai‘i Revised Statutes (HRS) sec. 205.4.5 (b), the state law that allows construction of residential (*non-farm*) dwellings on lots existing before June 4, 1976. The June 1976 date is the effective date of HRS sec. 205-4.5 (a)(4), when the state law that specifies farm dwelling standards came into effect. Since parcel 14 is a lot created in 1847, before 1976, the farm operation of agricultural activity and income standards of sec. 205-4.5 (a)(4) do not apply to Dwelling 1.

**Dwelling 1: 2013 “AS BUILT” ‘FARM DWELLING.’** RPT Division online records confirm that a BP was issued for an as built farm dwelling with BP #2013-00265 (opened: 3/15/13); this BP remains in ‘Issued’ status and is not completed.

In numerical order, Dwelling 1 is the first dwelling on parcel 14’s building site; and, approval of the 2013 as-built farm dwelling was by BP application, only, and not correct.

11. **Dwellings 2 & 3: Applicants' reasons for first Farm Dwelling and one AFD.** The landowner-applicants, Ngo and Nguyen, are requesting the first farm dwelling and one AFD for parcel 14. One dwelling is for the landowner-applicants to live and work on the farm; and, a dwelling for family members who would also be a part of the family farming operation (application statement at pp. 1 & 3). The on-site farm housing will allow the applicants to develop, plant, maintain, and undertake the harvest of the existing and proposed orchard expansion and its potential increase in yield of fruit crops.

Finally, Ngo and Nguyen, have been victimized and are vulnerable to agricultural theft of their fruit crop. They explain the requested Farm Dwelling and the one AFD will enable their family's residential presence, along with their farm employee family, for the property's on-site security to discourage or prevent crop theft.

12. **Summary.** In evaluating the above-referenced county building permit records of parcel 14 with the current Farm Dwelling and the request for one AFD, the following list of one existing dwelling; one approved first farm dwelling; and, the request for one AFD will result in three dwellings on the property:

- **Dwelling 1:** The existing first residential dwelling with a 2013 BP.; no requirement for farming and ag income.
- **Dwelling 2:** The first farm dwelling that qualifies for a Farm Dwelling Notice; and,
- **Dwelling 3:** The request for one AFD, the third dwelling on par.14.

13. **Two State Statutory Standards.** Two state laws provide the minimum statutory standards germane to evaluate the Ngo and Nguyen application:

HRS sec. 204-4.5 (a)(4): for '... a ... dwelling located on and used in connection with a farm, ... or where agricultural activity provides income to the family occupying the dwelling; ...'

HRS sec. 165-2: is the second state statutory standard to evaluate an AFD application; it defines "farming operation" to mean '... a commercial agricultural ... [or whatever type of agriculture is undertaken] facility or pursuit conducted, in whole or in part, ...'

### FINDINGS

1. **First Farm Dwelling & one Additional Farm Dwelling.** For properties classified and located in the State Land Use Agricultural District, farm dwellings are required by state law, HRS sec. 205-4.5 (a)(4). Furthermore, any additional dwelling, is required to be a farm dwelling or an additional farm dwelling, according to Hawai'i County Zoning Code sec. 25-

5-77 (b) and (c) & Planning Department Rule 13-4 (a)..

The state and county Agricultural classification of parcel 14; the two state laws of sec. 205-4.5 (a)(4) and (b); and, the county laws of Hawai'i County Zoning Code sec. 25-5-77 (b) or (c), and Hawai'i County Planning Department Rule 13-4 (c) - allow Ngo and Nguyen to apply for the requested first Farm Dwelling and the one AFD on their property. These laws do not limit the number of single-family residential dwellings that may be permitted as AFDs:

**Farm Dwelling Standard.** According to HRS sec. 205-4.5(a)(4), a farm dwelling means a single-family dwelling located on and used in connection with a farm or where agricultural activity provides income to the family occupying the dwelling. The farm dwelling definitions of Hawai'i County Code sec. 25-5-77(b) and 25-1-5(b) Zoning, and Planning Department Rule 13-3 (b) are consistent with the State law definition.

2. **Finding of Located on & Used in Connection with a Farm.** Ngo and Nguyen's documentation substantiated their existing fruit tree orchard farming operation on parcel 14 (discussed above at Background # 6, 7, 8, and 9). Therefore, the application for the one proposed AFD satisfies one part of the HRS sec. 205-4.5 (a)(4) statutory criteria: it requires the AFD to be located on and used in connection with a farm.
3. **Finding of Agricultural Income Standard of HRS sec. 205-4.5 (a)(4); and, Commercial Agriculture & Farming Operation of HRS sec. 165-2.** The Hawai'i Red Fruits AFD application provided documentation of farm income generated from its established commercial farm operation of fruit and nuts agriculture:

The filing of the 2015-2016-2017-2018-2019 Schedule F (Form 1040) Profit or Loss from Farming documents past farm income derived from sales of fruits or nuts ag activity of parcel 14.

4. **Working Farm, Farming Operation, and Commercial Agriculture Standard.** In general, HRS sec. 165-2 defines a working farm or a farming operation to mean "... a **commercial agricultural facility or pursuit conducted in whole or in part** ...; the planting, cultivating, harvesting, and processing of crops;" (emphasis added). Furthermore, for the purpose of the Ngo and Ngyuen's – Hawai'i Red Fruits application, the statutory definition of farming operation includes 'The employment and use of labor.' Sec. 165-2 (6). And, HRS sec. 205-4.5 (a)(4) requires the agricultural activity provide income to the family occupying the farm dwelling (discussed above at Findings #1).

From the foregoing discussion, it is the finding and determination that Ngo and Nguyen's reporting periods of 2015 through 2019, satisfies the basic statutory standards of a commercial agricultural farming operation of sec. 165-2 and "farm dwelling," of sec. 205-4.5 (a)(4), that means '... or where agricultural activity provides income to the family occupying the dwelling; ...'

### DECISION AND CONDITIONS

As a result of the above-findings and background report, your request to construct one (1) Additional Farm Dwelling is approved for the third dwelling on par. 14, **subject to the following conditions:**

1. Your AFDA (or agreement) has been approved based on the existing and future commercial agricultural activity or pursuit as summarized in this letter and represented on the submitted Farm Plan Summary and other application materials.
2. **Right to Inspect.** The First Party, identified in the Additional Farm Dwelling Agreement, shall allow the Second Party, the Hawai'i County Planning Department or its representative, the right to inspect the farm operation upon reasonable prior notice and at a mutually agreeable date and time.
3. 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. Haw. County Zoning Code sec. 25-2-10 and Haw. County Planning Department Rule 13-8 (d)(2).
4. **The enclosed AFDA** shall be returned to the Planning Department with the appropriate notarized signature(s) **along with a check made out to the State of Hawai'i Bureau of Conveyances in the amount of \$41.00** (Regular System) in accordance with the enclosed **AFDA Instructions**.
5. **The farming operation** shall be for commercial agriculture and the one Additional Farm Dwelling shall be used for commercial 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. Haw. County Planning Department Rule 13-8 (d)(1).
6. An **Additional Farm Dwelling Agreement affidavit** shall be notarized and submitted to the Planning Department for recordation with the State of Hawai'i, Bureau of Conveyances, which states that the additional dwelling shall be used for farm-related purposes. Haw. County Planning Department Rule 13-8 (d)(3).
7. **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.** Planning Department Rule 13-8 (d)(3).

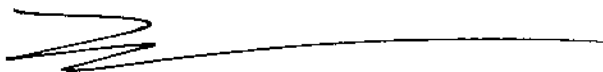


Mrs. Tram Ngo  
Mr. Chanh Nguyen  
February 2, 2021  
Page 9

8. **Compliance is required** with all other applicable rules, regulations, and requirements of HRS Chapters 205 and 165, the County Planning Department (including but not limited to the County of Hawai'i Code Chapter 25, Zoning), Department of Public Works, Department of Water Supply, Fire Department, the State of Hawai'i Department of Health, and any other reviewing agencies/divisions listed on the County Building Permit application.
9. **For the construction of the proposed Additional Farm Dwelling**, the applicant shall comply with all standards, specifications, conditions, and requirements of the county building permit application process, of the County of Hawai'i Department of Water Supply, the State of Hawai'i Department of Health, and the conditions for construction of buildings designed for human occupancy of Hawai'i County Zoning Code sec. 25-4-2 (a) (1) and (2).
10. The decision to approve the Additional Farm Dwelling shall be **valid for a period of two (2) years** from the date of this approval letter. Therefore, there is a two-year period to secure a Building Permit (BP) for the AFD. Failure to secure a BP to construct the AFD on or before the two-year period expires, may be cause for the Planning Director to initiate a process to rescind and invalidate the AFD approval. Haw. County Zoning Code sec. 25-2-7.

Should any further questions or concerns arise, please feel free to contact staff planner, Earl Lucero, at (808) 961-8160, or via email at [Earl.Lucero@hawaiiicounty.gov](mailto:Earl.Lucero@hawaiiicounty.gov).

Sincerely,



ZENDO KERN  
Planning Director

EML:jaa

P:\Admin Permits Division\AFDA\2019\EARL\FDA-19-000470 HawRedFruitsNgoNguyen\FDA-19-000470  
HawRedFruitsNgoNguyenReconsidAppvl v2.doc

Enclosures: AFDA Instructions  
AFDA Document

cc (via email): GIS Section (letter w/enclosures)  
Lisa Miura, Administrator, Real Property Tax Office (letter only)

## Additional Farm Dwelling Agreement Instructions

Attached is the Additional Farm Dwelling Agreement form for your approved application. It is important that you follow these instructions in the completion of the form. Failure to complete and submit a properly completed agreement form to the Planning Department for recordation with the Bureau of Conveyances may cause your Additional Farm Dwelling Agreement to be rejected by the Bureau and delay approval of your application for a building permit for the additional farm dwelling. Building permit applications for additional farm dwellings will not be approved by the Planning Department until the AFDA form and the required submittals specified below have been returned to the Planning Department. You may make as many copies of the AFDA document for your records as necessary. A copy of the final recordation page will be available from the Planning Department when received back from the Bureau of Conveyances upon request.

1. All persons in the "First Party" must sign before a Public Notary in the appropriate location on the signature page (Page 5). Photocopies of this page may be made and sent to any persons listed on the page whose notarized signatures are required and then attached to the agreement document along with the original signature page. Facsimiles or FAX copies of signatures will not be accepted.

**Note: All signatures must be the same as the typed name. Therefore, if John L. Doe is the name typed the signature must also be John L. Doe. Signing John Doe or Jonathan L. Doe will cause the agreement document to be rejected by the Bureau of Conveyances for recordation purposes.**

2. The date on page 2 will be filled in when the agreement is signed by the Planning Director; please leave it blank.
3. Enclose a check or money order in **the amount of \$41.00**, made payable to the **Bureau of Conveyances**, for the recordation fee.
4. Return the **original** completed AFDA document with all required signatures and the recordation fee payment to the Planning Department for the Director's signature and submittal to the Bureau of Conveyances for recordation.

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AFTER RECORDATION, RETURN BY MAIL TO:

County of Hawai'i Planning Department  
101 Pauahi Street, Suite 3  
Hilo, Hawai'i 96720

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TITLE OF DOCUMENT:

**ADDITIONAL FARM DWELLING AGREEMENT (FDA-19-000470)**

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PARTIES TO DOCUMENT:

**FIRST PARTY: TRAM NGO & CHANH NGUYEN**

**SECOND PARTY: COUNTY OF HAWAI'I**

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PROPERTY DESCRIPTION:

Por. of Royal Grant 34, La'imi  
(por. of Ka'akepa-Mālamalama Iki),  
S. Hilo, Hawai'i Island

**TMK: (3) 2-8-012:014**

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## ADDITIONAL FARM DWELLING AGREEMENT

THIS AGREEMENT made and executed this \_\_\_ day of \_\_\_\_\_, 2021, by and between TRAM NGO AND CHANH NGUYEN, herein called the "First Party," whose mailing address is 2357 Kilauea Avenue, Hilo, HI 96720-8151; and, the **COUNTY OF HAWAII**, herein called the "Second Party."

IT IS HEREBY AGREED that the First Party may construct one additional farm dwelling located on the real property of Parcel 14 (note: the additional farm dwelling of this agreement is the approved second farm dwelling; and, in chronological and numerical order, the additional farm dwelling will be and result in a third single-family dwelling on this parcel). The property, Parcel 14, is described as a portion of Royal Patent Grant 34, La'imi (por. of Ka'akepa-Mālamalama Iki), South Hilo, Island of Hawai'i, containing 34.5810 acres, **Tax Map Key (3) 2-8-012: (parcel) 014**, situated in the State Land Use Agricultural district and with the county zoning classification of Agricultural (A-20a) by the Second Party.

IT IS HEREBY ACKNOWLEDGED that the First Party FEE OWNER is the legal owner of the property described above.

IT IS HEREBY FURTHER AGREED that this approval to construct one additional farm dwelling (the second farm dwelling) is given subject to the following conditions:

1. The additional farm dwelling and first 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 this agreement shall run with the land and apply to a lessee or tenant of the lot or of any portion of Parcel 14.

IT IS HEREBY FURTHER AGREED that should the pertinent provisions of the State and County laws, 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, for the property, Parcel 14, situated within the State Land Use Agricultural district, any land use and zoning violations that is determined by the Second Party to be caused by the First Party, a LESSEE or a TENANT, the Second Party may impose fines in violation of Hawai'i Revised Statutes section 205-4.5. 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 a first violation; for any additional violation, there shall be a fine of not more than \$5,000. The Second Party may also impose fines for any violation of Hawai'i County Code Chapter 25, as amended, according to the procedures and fine schedule of Hawai'i County Code – Zoning Code sections 25-2-30 through 25-2-36.

IN CONSIDERATION OF THE AFORESAID, the Second Party hereby approves this Agreement to be in conformity with Hawai'i Revised Statutes sections 205-2 and 205-4.5, consistent with the permitted uses of the State Land Use Agricultural district. This Agreement also conforms to Hawai'i County Code Chapter 25, as amended.

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

FIRST PARTY:

\_\_\_\_\_  
**TRAM NGO**, Fee Owner, Tenants by the Entirety

\_\_\_\_\_  
**CHANH NGUYEN**, Fee Owner, Tenants by the Entirety

SECOND PARTY:

\_\_\_\_\_  
**ZENDO KERN, Planning Director**  
County of Hawai'i Planning Department

STATE OF HAWAII )  
 ) SS.  
COUNTY OF HAWAII )

On this \_\_\_\_\_ day of \_\_\_\_\_, 2021 before me personally appeared TRAM NGO and CHANH NGUYEN, to me known to be the persons described herein and who executed the foregoing instrument, and acknowledged that they executed the same as their free act and deed.

\_\_\_\_\_  
Notary Public, State of Hawaii

My commission expires: \_\_\_\_\_

