

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 27, 2004

Robert L. and Theresa E. Byrne  
P.O. Box 995  
Captain Cook, Hawaii 96704

Dear Mr. and Mrs. Byrne:

**Additional Farm Dwelling Agreement**

**Applicant:** Robert L. and Theresa E. Byrne  
**Land Owners:** Robert L. and Theresa E. Byrne  
**State Land Use:** Agricultural  
**County Zoning:** Agricultural (A-5a & A-20a)  
**Land Area:** 5.897-acres  
**Tax Map Key:** (3) 8-1-023:024

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 re-reviewed your request for an additional farm dwelling on the subject property. 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 enclosed Additional Farm Dwelling Agreement to be submitted for recordation with the Bureau of Conveyances.
2. Name and address of the landowner(s) or lessee(s), 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(s) if the lessee filed the request.

*Hawaii County is an equal opportunity provider and employer.*

**EXHIBIT**

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MAY 03 2004

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:

(a) Ongoing agricultural activities include the following:

- i. 4 acres of Sharwil Avocados (80 trees), 0.7 acres of various exotic fruit trees (25 trees), a 1,000 sq. ft. vegetable garden and approximately 1 acre of coffee (in need of reclamation);

(b) Proposed agricultural activities include the following:

- i. Addition of 25 more exotic fruit trees, one head of cattle (for farm consumption), expansion of vegetable garden to include a greenhouse, reclaim existing coffee and plant additional coffee between Avocado trees (approximately 4 acres);
- ii. It is estimated that total man-hours for existing and proposed agricultural activity will be in excess of 70 per week.

It is stated that the additional farm dwelling will be used to house a farm worker who will help with the expanding and maintenance of the farm so that it may double in productivity.

4. In support, evidence of a State of Hawaii Department of Taxation's General Excise (GE) Tax License, County of Hawaii Real Property Tax land use dedication of approximately 4.7 acres for agricultural use have been presented along with receipts for the sale of avocados.

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)

EXHIBIT

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2. The subject lot was created by subdivision (4555) approved on November 25, 1980, which, pursuant to HRS §205-4.5(b), normally requires the first dwelling on the lot to be a farm dwelling. However, the first dwelling was established on the property prior to this requirement and thus is a single-family dwelling. The second dwelling was approved as an Ohana Dwelling on March 18, 1988 and shall be considered the first farm dwelling for purposes of this application for an AFDA.
3. The Farm Plan, GE Tax License (ID number 30135063), 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 and the income is being taxed.
4. In addition, the following agencies have submitted their comments as stated below:

(a) Department of Water Supply (DWS) (Letter dated April 20, 2004):

“We have reviewed the subject application and have the following information.

The property does not have an existing water service with the Department as the parcel is beyond the service limits of the Department’s existing water system. Also, as the applicant indicates that the additional farm dwelling will be on a water catchment system, the Department has no objections to the application.

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

(b) Real Property Tax Office (RPT) (Submitted Tax Clearance form and Memo dated February 17, 2004):

“This is to certify that Robert L. & Theresa E. Byrne has paid all Real Property Taxes due the County of Hawaii up to and including December 31, 2003.”

“A field check of the above mentioned property was completed on February 10, 2004. During my visit I was able to confirm that approximately 4.7 acres is in agriculture use.”

(c) Department of Health (DOH):

The DOH did not respond to this application as of this date.

**EXHIBIT**

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Decision:

In view of the above, your request to construct a **third (first AFD) dwelling** on the subject property 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. In reference to the DWS comment, may we suggest the following:
  - a. Any dwelling not serviced by a County water system should be provided with and maintain a private potable rain catchment system which includes a minimum 6,000 gallons for domestic consumption or potable uses. This catchment system should adhere to the Department of Public Works, Building Division's "Guidelines for Owners of Rain Catchment Water Systems" as well as the State Department of Health requirements related to water testing and water purifying devices.
  - b. Any farm dwelling should be provided with and maintain a private water supply system which includes an additional 3,000 gallon water storage capacity for fire fighting and emergency purposes. The emergency water supply system, including the necessary compatible connector system and location of the water storage facility on the property, should meet with the approval of the Hawaii County Fire Department.
4. The First Party shall verify with the DOH the type and number of individual wastewater systems that will be allowed on the property.

**EXHIBIT**

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Robert L. and Theresa E. Byrne

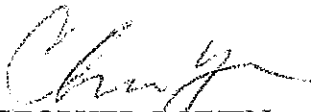
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5. All other applicable rules, regulations, and requirements of the Planning Department (including but not limited to the Zoning Code, Chapter 25), Department of Public Works, Department of Water Supply, Fire Department and State Department of Health and other reviewing agencies/divisions listed on the Building Permit Application.
6. Your Additional Farm Dwelling Agreement has been approved based partly 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.
7. The First Party shall allow the Second Party or its representative to inspect the farm upon reasonable prior notice.
8. This Additional Farm Dwelling Agreement 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 building permit for this additional farm dwelling on or before April 28, 2006 may cause the Director to initiate proceedings to invalidate the AFDA.

Should you have any questions, please feel free to contact Jonathan Holmes of this office at 961-8288.

Sincerely,



CHRISTOPHER J. YUEN  
Planning Director

JRH:pak

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Enclosures: AFDA document  
AFDA document instruction sheet

**EXHIBIT**

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Robert L. and Theresa E. Byrne  
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xc: Mr. Milton Pavao, DWS  
Mr. Mike McCall, RPT  
Planning Department - Kona

EXHIBIT

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AFTER RECORDATION, RETURN BY MAIL TO:

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

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TITLE OF DOCUMENT:

**ADDITIONAL FARM DWELLING AGREEMENT**

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PARTIES TO DOCUMENT:

**FIRST PARTY: ROBERT L. BYRNE and THERESA E. BYRNE**

**SECOND PARTY: COUNTY OF HAWAII**

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PROPERTY DESCRIPTION:

**TMK: (3) 8-1-023:024**

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ADDITIONAL FARM DWELLING AGREEMENT

THIS AGREEMENT made and executed this 27<sup>th</sup> day of April, 2004, by and between **ROBERT L. BYRNE and THERESA E. BYRNE**, herein called the "First Party," whose mailing address is P.O. Box 995, Captain Cook, Hawaii 96704, and the COUNTY OF HAWAII, herein called the "Second Party."

IT IS HEREBY AGREED that the First Party may construct a third farm dwelling located on the property described by Tax Map Key (3) 8-1-023:024 situated within the State Land Use Agricultural district and zoned Agricultural (A-5a and 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.

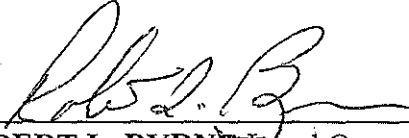


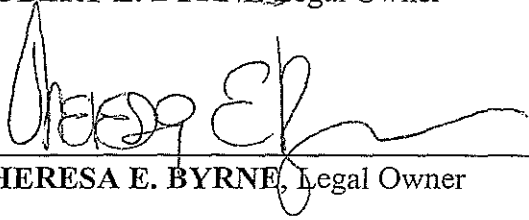
IT IS HEREBY FURTHER AGREED that if the property is situated within the State Land Use Agricultural district, the Second Party may impose a fine of not more than \$5,000 for violation of Section 205-4.5, Hawaii Revised Statutes. If the violation is not corrected within six months of such citation and 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.

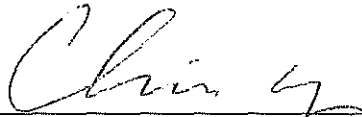
IN WITNESS WHEREOF, the parties have executed this agreement on the day and year first above written.

FIRST PARTY:

  
\_\_\_\_\_  
**ROBERT L. BYRNE**, Legal Owner

  
\_\_\_\_\_  
**THERESA E. BYRNE**, Legal Owner

SECOND PARTY:

  
\_\_\_\_\_  
**CHRISTOPHER J. YUEN**, Planning Director  
County of Hawaii Planning Department

STATE OF HAWAII

)

) SS.

COUNTY OF HAWAII

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On this 18 day of May, 2004 before me personally appeared **ROBERT L. BYRNE** and **THERESA E. BYRNE** 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.

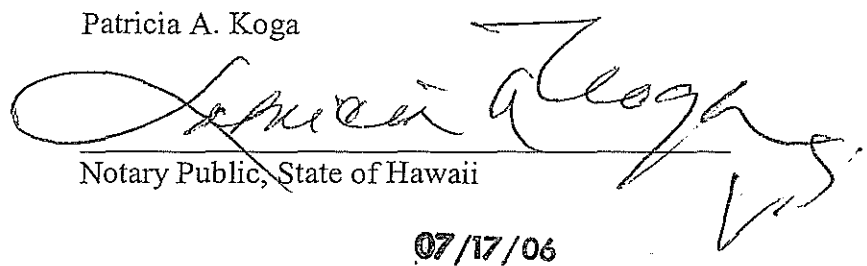
*Heen M. Nagata*  
Notary Public, State of HAWAII

LS

My commission expires: 01-04-05

STATE OF HAWAII            )  
  ) SS  
COUNTY OF HAWAII        )

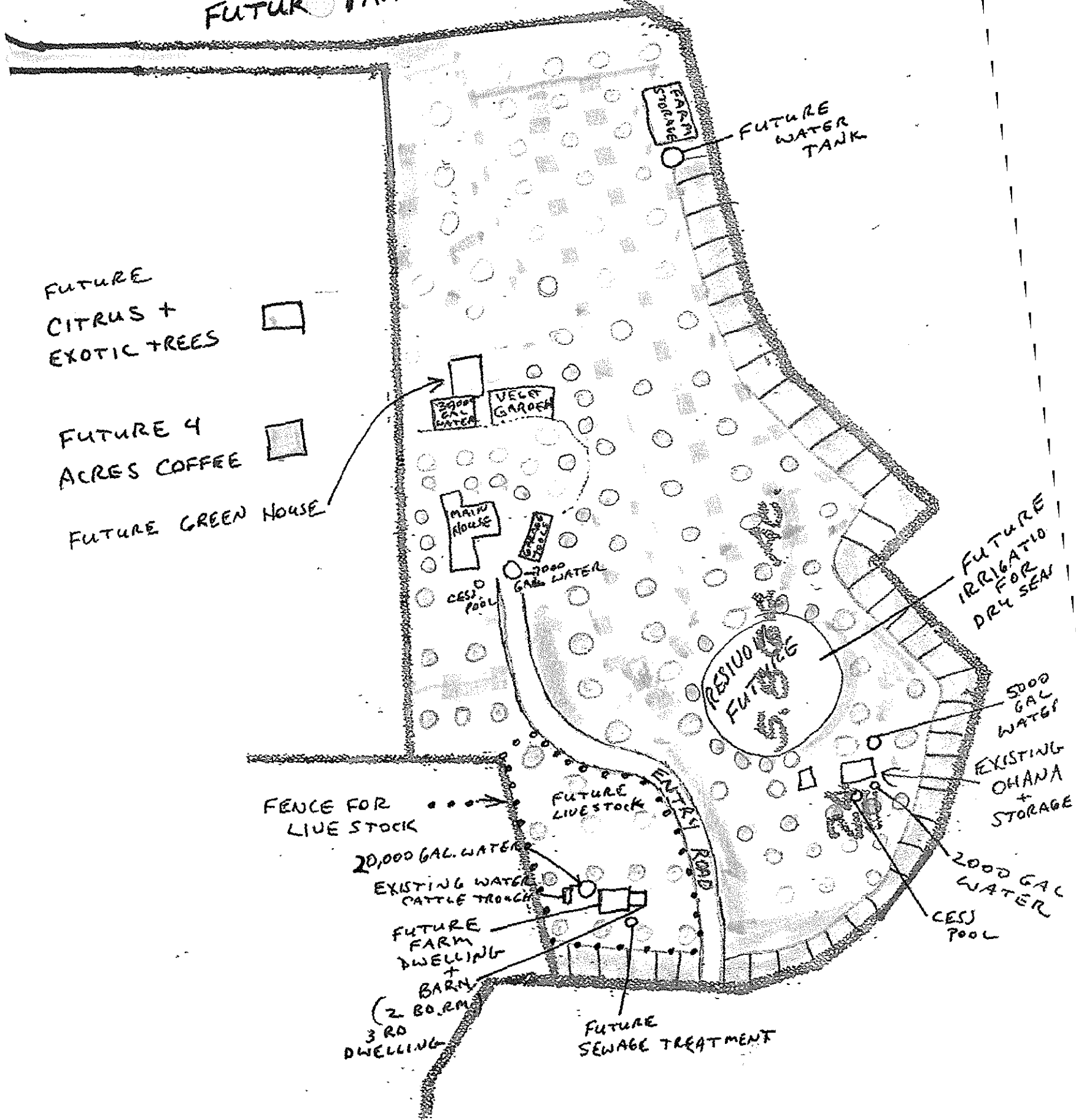
On this 16<sup>th</sup> day of June, 2004 before me personally appeared **CHRISTOPHER J. YUEN**, to me personally known, who, being by me duly sworn, did say that he is the Planning Director of the County of Hawaii; and that the Planning Department of the County of Hawaii has no corporate seal; and that 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

# FUTURE FARM ADDITIONS

EXHIBIT 3



FUTURE CITRUS + EXOTIC TREES

FUTURE 4 ACRES COFFEE

FUTURE GREEN HOUSE

FUTURE WATER TANK

20,000 GAL. WATER

VEGET. GARDEN

MAIN HOUSE

7,000 GAL. WATER

CESS. POOL

RESIDUAL FUTURES

FUTURE IRRIGATION FOR DRY SEAS

5,000 GAL. WATER

EXISTING OHANA + STORAGE

20,000 GAL. WATER

CESS. POOL

FENCE FOR LIVE STOCK

FUTURE LIVESTOCK

20,000 GAL. WATER

EXISTING WATER CATTLE TROUGH

FUTURE FARM DWELLING + BARN

(2 BDRM, 3 RD DWELLING)

FUTURE SEWAGE TREATMENT

ROAD