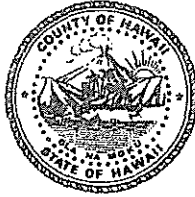


Garry Kim
Mayor



Christopher J. Yuen
Director

Brad Kurokawa, ASLA
LEED® AP
Deputy Director

County of Hawaii

PLANNING DEPARTMENT

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

February 7, 2007

Mr. Cary and Mrs. Beth-An Nishijima
19 Waikahe Road
Hilo, Hawaii 96720

Dear Mr. and Mrs. Nishijima:

SUBJECT: Additional Farm Dwelling Agreement (fda-06-000147)
Applicants: Cary and Beth-An Nishijima
Land Owners: Cary and Beth-An Nishijima
State Land Use: Agricultural
County Zoning: A-3a
Land Area: 3.156 Acres
Tax Map Key: (3) 2-4-005:156

Please be advised that Condition Number six (6) of the approval of your AFDA is hereby corrected to read:

“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 January 26, 2009 may cause the Director to initiate proceedings to invalidate the AFDA.”

We apologize for any confusion or trepidation the incorrect date may have caused you.

EXHIBIT

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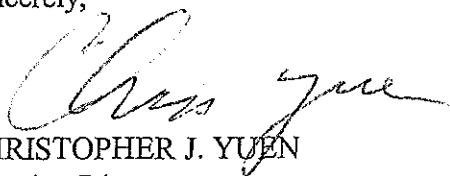
Mr. Cary and Mrs. Beth-An Nishijima

Page 2

February 7, 2007

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

Sincerely,



CHRISTOPHER J. YUEN
Planning Director

JRH:cd

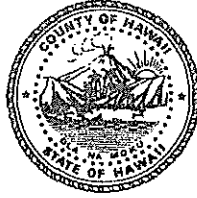
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xc: Mr. Norman Hayashi

EXHIBIT

A

arry Kim
Mayor



Christopher J. Yuen
Director

Brad Kurokawa, ASLA
LEED® AP
Deputy Director

County of Hawaii
PLANNING DEPARTMENT

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

January 25, 2007

Mr. Cary and Mrs. Beth-An Nishijima
19 Waikahe Road
Hilo, Hawaii 96720

Dear Mr. and Mrs. Nishijima:

SUBJECT: Additional Farm Dwelling Agreement (fda-06-000147)
Applicants: Cary and Beth-An Nishijima
Land Owners: Cary and Beth-An Nishijima
State Land Use: Agricultural
County Zoning: A-3a
Land Area: 3.156 Acres
Tax Map Key: (3) 2-4-005:156

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 applicants/landowners.
2. A farm plan or evidence of the applicants' 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:
 - i. The activity is in the implementation stage.

EXHIBIT
A

Mr. Cary and Mrs. Beth-An Nishijima

Page 2

January 25, 2007

(b) Proposed agricultural activities include:

- i. A 20' x 100' (2,000 sq.ft.) greenhouse has been ordered for the planting of various produce and herbs, primarily green onions to supply the family business, Nori's Saimin and Snacks in Hilo. In the past couple of years the previous suppliers of green onions for the restaurant have stopped doing so or will stop soon.
 - ii. The balance of the usable land area will be planted in coffee to be marketed under the Nori's Inc. label.
 - iii. Estimation of man hours is 20 per week.
 - iv. The applicant's parents will occupy the additional farm dwelling and work on the agricultural activity as Cary works off island and Beth-An runs the restaurant full time.
3. Applicants' 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 by subdivision (SUB 6130) approved on April 20, 1992, which, pursuant to HRS §205-4.5(b), requires the first dwelling on the lot to be a farm dwelling.
3. The Farm Plan, evidence of a State of Hawaii General Excise Tax license (#W03913320-02) 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

A

(a) Department of Water Supply (DWS) (Letter dated January 19, 2007):

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

Please be informed that the subject parcel is currently served by a 5/8-inch meter, which is adequate for only one dwelling at an average daily usage of 400 gallons. Inasmuch as this application is proposing an additional dwelling, the installation of a separate 5/8-inch will be required. Water can be made available from the Department’s 4-inch waterline within Ainaola Drive, fronting 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 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.
2. Remittance of the following charges, which are subject to change, to our Customer Service Section:

FACILITIES CHARGE (FC):

2 nd service to the parcel	\$5,500.00
---------------------------------------	------------

SERVICE LATERAL INSTALLATION CHARGE:

<u>Install one meter on Ainaola Drive, a County Road</u>	<u>2,600.00</u>
Total (Subject to change)	\$8,100.00

3. Installation of a backflow prevention assembly (reduced pressure type) by a licensed contractor on the applicant’s property within five (5) feet of the meter. If the existing meter does not have an approved backflow prevention assembly, the installation of one will also be required as there is existing or proposed agricultural activity on the property. The installation of the backflow prevention assembly(s) must be inspected and approved by the Department before the water service can be granted. A copy of our backflow prevention handout is being forwarded to the applicant to help them understand this requirement.

Should there be any questions, please call Mr. Finn McCall of our Water Resources and Planning Branch at 961-8070, extension 255.”

EXHIBIT

A

(b) Real Property Tax Office (RPT):

The RPT office did not comment on this application as of this date.

(c) Department of Health (DOH) (Memorandum dated December 22, 2006):

“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.

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

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. Cary and Mrs. Beth-An Nishijima

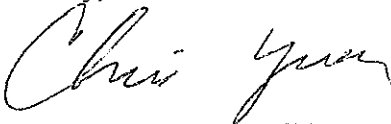
Page 5

January 25, 2007

4. Your AFDA has been approved based 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 January 26, 2008 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. Norman Hayashi
Mr. Milton Pavao, DWS
Mr. Mike McCall, RPT

EXHIBIT

A

THE ORIGINAL OF THE DOCUMENT
RECORDED AS FOLLOWS:
COUNTY OF HAWAII
DEPARTMENT OF CONVEYANCE

DATE: Doc 2007-097742
DOCUMENT: MAY 31, 2007 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: CARY NISHIJIMA and BETH-AN NISHIJIMA

SECOND PARTY: COUNTY OF HAWAII

PROPERTY DESCRIPTION:

TMK: (3) 2-4-005:156

ADDITIONAL FARM DWELLING AGREEMENT

THIS AGREEMENT made and executed this 25th day of January 2007, by and between **CARY NISHIJIMA and BETH-AN NISHIJIMA** herein called the "First Party," whose mailing address is 19 Waikahe Road, Hilo, Hawaii 96720 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) 2-4-005:156 situated within the State Land Use Agricultural district and zoned Agricultural (A-3a) 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.

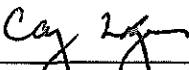
IT IS HEREBY FURTHER AGREED that should the pertinent provisions of the State and County laws and rules and regulations change to authorize said farm dwelling, upon request of the First Party, this Agreement may be reconsidered for possible amendment and/or severance.

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.

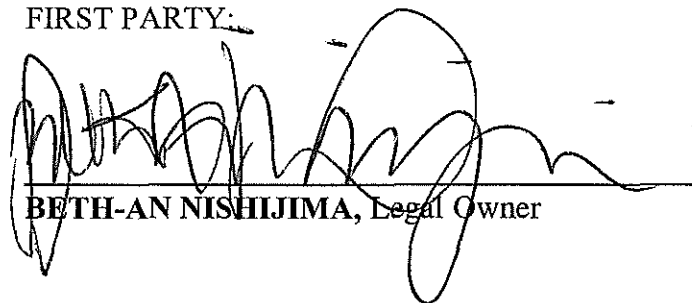
IN WITNESS WHEREOF, the parties have executed this agreement on the day and year first above written.

FIRST PARTY:



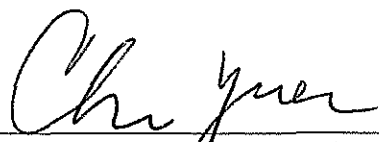
CARY NISHIJIMA, Legal Owner

FIRST PARTY:



BETH-AN NISHIJIMA, Legal Owner

SECOND PARTY:



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

STATE OF HAWAII


)

) SS.

COUNTY OF HAWAII

)

On this 21st day of February, 2007 before me personally appeared **CARY NISHIJIMA and BETH-AN NISHIJIMA**, 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.

 Lyndee T. Maeda

Notary Public, State of Hawaii

My commission expires: 12/25/2009

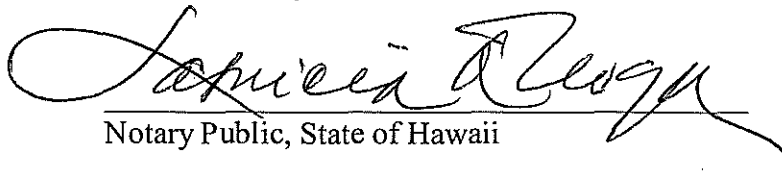
L.S.

STATE OF HAWAII)
) SS
COUNTY OF HAWAII)

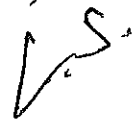
On this 24th day of May, 2007 before me personally appeared

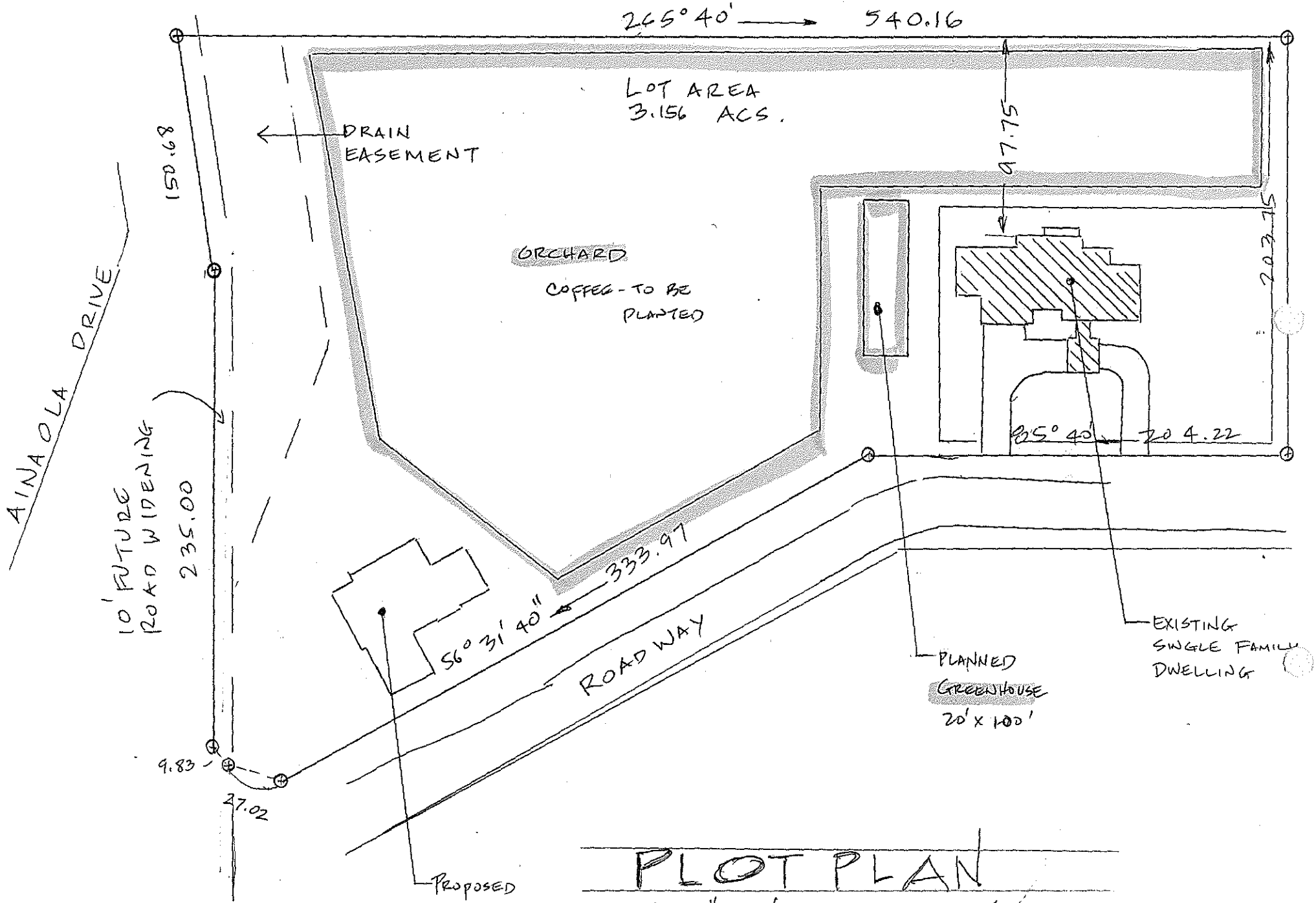
CHRISTOPHER J. YUEN, to me personally known, who, being by me duly sworn, did say that he is the Planning Director of the County of Hawaii; and that the Planning Department of the County of Hawaii has no corporate seal; and that the instrument was signed on behalf of the Planning Department of the County 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: 07/17/10





PLOT PLAN

SC: 1" = 60'

TMK (3) 2-4-5: 156