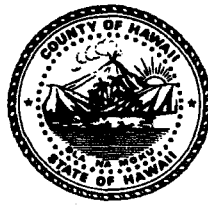


Harry Kim  
Mayor

Wil Okabe  
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

Michael Yee  
Director

Duane Kanuha  
Deputy Director

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

August 23, 2019

Stantell K Otare & Kapena T. Otare  
SKO Assets LLC  
74-4898 Māmalahoa Highway  
Holualoa, HI 96725

Dear Stantell & Kapena Otare:

Additional Farm Dwelling Agreement Application (FDA-19-000463)

Applicant: SKO Assets LLC  
Owner: SKO Assets LLC  
State Land Use: Agriculture  
County Zoning: Agricultural (A-5a)  
Land Area: 5.072 acres  
TMK: (3) 7-4-006:021

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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. 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.
2. Written authorization of the landowner(s) if the lessee filed the request.
3. 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 existing income-producing agricultural activities on the subject property:
  - (a) Proposed agricultural activities:
    1. Mamaki.
  - (b) The labor man-hours for the above proposed activities are 30-40 hours per week.
4. In additional support, a State of Hawaii Department of Taxation's General Excise (GE) Tax License has also been presented.
5. The 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.** (emphases added)
2. The subject lot was created by subdivision (SUB-4302) approved on May 8, 1979, which, pursuant to HRS §205-4.5(b), requires the first dwelling on the lot to be a farm dwelling.
3. The Farm Plan, agricultural dedication, 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 (Memorandum dated May 15, 2019):

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

An existing 5/8-inch meter services this property and is adequate for only one (1) dwelling unit at an average of 400 gallons per day. Inasmuch as this application is proposing an additional dwelling, the installation of a separate 5/8-inch meter would normally be required in accordance with the Department's regulations. However, the Department's existing water systems facilities cannot support an additional water meter at this time. Extensive improvements and additions, which may include, but not be limited to, source, storage, booster pumps, transmissions, and distribution facilities, would be required. Currently, sufficient funding is not available from the Department for such improvements and no time schedule is set.

Therefore, the Department has no objections to the proposed application, subject to the applicant understanding and accepting that the Department cannot provide service to the proposed additional farm dwelling. Should the application be approved, all dwellings shall not share the existing meter, and the water system plumbing between any dwellings shall not be interconnected in any way.

Please be informed that a reduced pressure type backflow prevention assembly was previously installed and approved by the Department.

Should there be any questions, please contact Mr. Troy Samura of our Water Resources and Planning Branch at 961- 8070, extension 255."

(b) Real Property Tax Office:

No Comments Were Received

(c) Department of Health (Memorandum dated May 2, 2019):

“The Department of Health (DOT), Clean Water Branch (CWB), acknowledges receipt of this subject document on 04/25/19. The CWB has reviewed the limited information contained in the subject document and offers the following comments:

Permit Issuance

- \* Any project and its potential impacts to State waters must meet the State’s:
  - 1) Antidegradation policy, which requires that the existing uses and the level of water quality necessary to protect the existing uses of the receiving State water be maintained and protected;
  - 2) Designated uses, as determined by the classification of the receiving State waters; and
  - 3) Water quality criteria [Hawai‘i Administrative Rules (HAR), Chapter 11-54],
- \* A Section 401 Water quality Certification (WQC) is required if your project/activity:
  - 1) Requires a federal permit, license, certificate, approval, registration, or Statutory exemption; and
  - 2) May result in a discharge into State waters. The term “discharge” is defined in Clean Water Act, Subsection 502 (16), 502 (12), and 502 (6). Examples of “discharge” include, but are not limited to, allowing the following pollutants to enter State waters from the surface or in-water; solid waste, rock/sand/dirt, heat sewage, construction debris, any underwater work, chemicals, fugitive dust/spray/paint, agricultural wastes, biological materials, industrial wastes, concrete/sealant/epoxy, and washing/cleaning effluent.

Determine if your project/activity requires a federal permit, license, certificate, approval, registration, or statutory exemption by contacting the appropriate federal agencies (e.g. Department of the Army (DA), U.S. Army Corps of Engineers (COE), Pacific Ocean Division Honolulu District Office (POH) Tel:808-835-4303; U.S. Environmental Protection Agency Tel: 415-947-8021; Federal Energy Regulatory Commission Tel: 866-208-3372; U.S. Coast Guard Office of Bridge Programs Tel: 202-372-1511).

To request a Section 401 WQC, you must complete and submit the Section 401 WQC application. This application is available on the e-Permitting Portal website located at: <https://eha-cloud.doh.hawaii.gov/epermit/>.

Please see HAR, chapter 11-54 for the State’ Water Quality Standards and for more information on the Section 401 WQC. HAR, Chapter 11-54 is available on the CWB website at: <http://health.hawaii.gov/cwb/>.

- National Pollutant Discharge Elimination System (NPDES) permit coverage is required for:
  - Storm water associated with construction activities for land disturbances of one (1) acres or more. Land disturbance includes, but is not limited to, clearing, grading, grubbing, excavation, demolition, uprooting of vegetation, equipment staging, and storage areas.
  - Storm water associated with industrial activities for facilities with Standard Industrial Classification Codes regulated in 40 CFR 122.26(b)(14)(i) through (ix) and (xi).
  - Storm water and certain non-storm water from a small Municipal Separate Storm Sewer System.
  - Discharges of water pollutants into State surface waters, Examples of these discharges include, but are not limited to, cooling water, hydrotesting waters, dewatering effluent, and process wastewater.
  - Discharges from the application of pesticides (including pesticides, herbicides, fungicides, rodenticides, and various other substances to control pest) to State waters.

An application for an NPDES individual permit must be submitted at least 180 calendar days before the commencement of the discharge or start of construction activities. To request an NPDES individual permit, you must complete and submit the NPDES individual permit application. This application is available on the e-Permitting Portal website located at: <https://eha-cloud.doh.hawaii.gov/epermit/>,

A Notice of Intent (NOI) for coverage under a specific NPDES general permit must be submitted at least 30 calendar days before the commencement of the discharge or start of construction activities. To request NPDES general permit coverage, you must complete and submit the NOI. The NOI is available on the e-Permitting Portal website located at: <https://eha-cloud.doh.hawaii.gov/epermit/>,

Please see HAR, Chapter 11-55 for more information on the NPDES individual permit and NPDES general permits. The specific NPDES general permits located in HAR, Chapter 11-55, Appendices B through M. HAR, Chapter 11-55 and HAR, Chapter 11-55., Appendices B through M are available on the CWB website at: <http://heath.hawaii.gov/cwb/>.

- According to State law, all discharges related to the project construction or operation activities, whether or not NPDES permit coverage and/or Section 401 WQC are required, must comply with the State's Water Quality Standards.

Monitoring

- Effluent discharge and/or receiving water monitoring may be required as conditions of Section 401 Water Quality Certifications and NPDES General and Individual permits.

Enforcement

- Noncompliance with water quality requirements contained in HAR, Chapter 11-54 and/or permitting requirements specified in HAR, Chapter 11-55 may be subject to penalties of \$25,000 per day per violation.
- Violations of Hawai'i Revised Statutes 342D and 342E may elicit administrative, civil and criminal penalties for such violations.

Polluted Runoff Control

- Manage projects identified in watershed-based plans that reduce polluted runoff and educate the public about nonpoint source pollution. Projects are selected through an annual request for proposals. Funding is provided by the EPA through the Clean Water Act. For more information on projects on funding opportunities, please visit: [www.hawaii.gov/doh/pollutedrunoffcontrol](http://www.hawaii.gov/doh/pollutedrunoffcontrol).

We recommend that you review all of the Standard Comments on our website: <http://hawaii.gov/health/environmental/env-planning/landuse/landuse.html>. Any comments specifically applicable to this project should be adhered to.

The same website also features a Healthy Community Design Smart Growth Checklist (Checklist) created by Built Environment Working Group (BEWG) of the Hawai'i State Department of Health. The BEWG recommends that state and county planning departments, developers, planners, engineers and other interested parties apply the healthy built environment principles in the Checklist whenever they plan or review new developments or redevelopments projects. We also ask you to share this list with others to increase community awareness on healthy community design."

**Decision:**

In view of the above, your request to construct an additional dwelling as a farm 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.
3. The enclosed Additional Farm Dwelling Agreement ("AFDA") must be returned to the Planning Department with the appropriate notarized signatures of all persons comprising the "First Party" to the agreement along with a check made out to the Bureau of Conveyances in the amount of \$41.00 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 with all required attachments has been recorded at the Bureau of Conveyances.**

4. The First Party (owners and their lessees and their successors in interest) 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.
5. Your Additional Farm Dwelling Agreement has been approved based on your proposed activities as presented in your farm plan and summarized previously in this letter. **It is required that the First Party (owners and their lessees and their successors in interest) to the Agreement shall continue to carry out and maintain this farm plan for the life of the additional farm dwelling. It is recognized that the First Party (property owners and lessees) to the Agreement shall have implemented at least 75% of the proposed farm plan within three (3) year of approval of the building permit for the additional farm dwelling. "Implementing" includes the planting and ground-rooted establishment of the proposed trees in a healthy, growing state.** The Second Party (County of Hawai'i Planning Department) to the Agreement may, in its sole discretion, allow time extensions and modifications for good cause shown by the First Party.
6. The First Party (owners and their lessees and their successors in interest) shall allow the Second Party or its representative to inspect the farm from time to time upon reasonable prior notice.
7. **The First Party is required to secure a building permit from the Department of Public Works, Building Division, for the construction of the additional farm dwelling on or before August 23, 2021.** Failure to secure a building permit for this additional farm dwelling on or before August 23, 2021 may cause the Director to initiate proceedings to invalidate the AFDA.
8. An initial extension of time for the performance of conditions within the permit may be granted by the Planning Director upon the following circumstances:
  - a. Non-performance is the result of conditions that could not have been foreseen or are beyond the control of the applicants, successors, or assigns and that are not the result of their fault or negligence.
  - b. Granting of the time extension would not be contrary to the General Plan or Zoning Code.
  - c. Granting of the time extension would not be contrary to the original reasons for the granting of the permit.
  - d. The time extension granted shall be for a period not to exceed the period originally granted for performance (i.e., a condition to be performed within one year may be extended for up to one additional year).

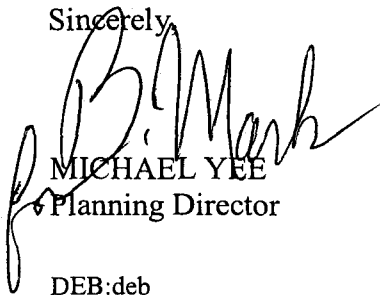
Should any of these conditions not be met or substantially complied with in a timely fashion, the Planning Director may initiate procedures to revoke this permit.

In reference to the Department of Water Supply's comment, we suggest the following:

1. Any dwelling not serviced by a County water system should be provided with and maintain a private potable rain-water catchment system with a minimum capacity of 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.
2. Any farm dwelling should be provided with and maintain a private water supply system with an additional minimum storage capacity of 3,000 gallons for fire fighting and other emergency purposes. The emergency water supply system, including the necessary compatible connection devices and the location of the water storage unit on the property, should meet with the approval of the Hawai'i County Fire Department.

Should you have any questions, please contact Deanne Bugado of our West Hawai'i office at 323-4770.

Sincerely,



MICHAEL YEE  
Planning Director

DEB:deb

P:\afda\Kona AFDA\AFDAap-7-4-6-21\_SKO\_Assets\_LLC

xc: Chief Sanitarian, DOH  
Manager, DWS  
Administrator, RPT

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AFTER RECORDATION, RETURN BY MAIL TO:

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

Total Pages: \_\_\_\_\_

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TITLE OF DOCUMENT:

**ADDITIONAL FARM DWELLING AGREEMENT**

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PARTIES TO DOCUMENT:

**FIRST PARTY: STANTELL K OTARE, MANAGER OF SKO ASSETS LLC  
KAPENA T. OTARE, MANAGER OF SKO ASSETS LLC**

**SECOND PARTY: COUNTY OF HAWAII**

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PROPERTY DESCRIPTION:

**TMK: (3) 7-4-006:021**

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ADDITIONAL FARM DWELLING AGREEMENT

THIS AGREEMENT made and executed this \_\_\_\_ day of \_\_\_\_\_, \_\_\_\_ , by and between STANTELL K OTARE, MANAGER OF SKO ASSETS LLC & KAPENA T. OTARE, MANAGER OF SKO ASSETS LLC, hereinafter referred to as the "First Party," whose mailing address is 74-4898 Māmalahoa Highway, Holualoa, HI 96725, and the COUNTY OF HAWAII, whose mailing address is Planning Department, 101 Pauahi Street, Suite 3, Hilo, HI 96720, hereinafter referred to as the "Second Party."

WITNESSETH

WHEREAS, IT IS HEREBY AGREED that the First Party may construct an additional dwelling (the farm dwelling) located on the property described by Tax Map Key (3) 7-4-006:021 situated within the State Land Use Agricultural district and zoned Agricultural (A-5a) (the "Property") 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 an additional dwelling as a farm dwelling are 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 dwellings.
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 of Hawai'i and County laws and rules and regulations change to authorize said farm dwelling, upon request of the First Party, its successors, heirs, personal representatives and assigns, 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 shall impose a fine against the First Party, its successors, heirs, personal representatives and assigns, of not more than \$5,000.00 for violation of any provision under section 205-4.5, Hawaii Revised Statutes. If the First Party fails to remove such violation within six months of such citation and the violation continues to exist, the First Party shall be subject to a citation for a new and separate violation. There shall be a fine of not more than \$5,000 for any additional violation. The Second Party may impose fines for any violation of Chapter 25, Hawaii County Code, as amended, in accordance with the procedures and fine schedule outlined in Section 25-2-35 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 Hawai'i Revised Statutes, relative to permitted uses within the State Land Use Agricultural district. This Agreement is also in conformance with Chapter 25, Hawai'i County Code, as amended.

[REMAINDER OF THIS PAGE INTENTIONALLY LEFT BLANK]

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

\_\_\_\_\_  
STANTELL K OTARE, MANAGER OF SKO ASSETS  
LLC, Legal Owner

FIRST PARTY

\_\_\_\_\_  
KAPENA T. OTARE, MANAGER OF SKO ASSETS  
LLC, Legal Owner

FIRST PARTY

COUNTY OF HAWAII

By \_\_\_\_\_  
Michael Yee  
Its Planning Director

SECOND PARTY

STATE OF HAWAII )  
 ) SS.  
COUNTY OF HAWAII )

On this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_ before me personally appeared STANTELL K OTARE, MANAGER OF SKO ASSETS LLC & KAPENA T. OTARE, MANAGER OF SKO ASSETS LLC, 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.

Signature: \_\_\_\_\_

Name: \_\_\_\_\_

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

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

(Official Stamp or Seal)

<u>NOTARY CERTIFICATION STATEMENT</u>	
Document Identification or Description: _____ _____	
Doc. Date: _____	
No. of Pages: _____ [including exhibits]	
Jurisdiction: _____	
_____ Signature of Notary	_____ Date of Notarization and Certification Statement
_____ Printed Name of Notary	
(Official Stamp or Seal)	

STATE OF HAWAI'I )  
 ) SS.  
COUNTY OF HAWAI'I )

On this \_\_\_\_ day of \_\_\_\_\_ 20\_\_\_\_, before me personally appeared Michael Yee, to me personally known, who, being by me duly sworn, did say that Michael Yee is the Planning Director of the County of Hawai'i, and that the Planning Department of the County of Hawai'i has no corporate seal; and that the instrument was signed on behalf of the Planning Department of the County of Hawai'i, a government agency, and said Michael Yee acknowledged the instrument to be the free act and deed of said Planning Department, County of Hawai'i.

\_\_\_\_\_  
Rachelle Ley

Notary Public, State of Hawai'i  
Third Judicial Circuit

My Commission Expires: June 12, 2023

Document Date:	_____	No. of Pages:	_____
Notary Name:	Rachelle Ley	Third Judicial Circuit	
Doc. Description:	Additional Farm Dwelling Agreement		
	Tax Map Key (3) 7-4-006:021		
Notary Signature	Date		