

**THE ORIGINAL OF THE DOCUMENT
RECORDED AS FOLLOWS:
STATE OF HAWAII**

BUREAU OF CONVEYANCES

DOCUMENT NO. _____ Doc A - 82480423

DATE - TIME _____ August 1, 2022 10:34 AM

AFTER RECORDATION, RETURN BY MAIL TO:

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

Total Pages: _____

TITLE OF DOCUMENT:

ADDITIONAL FARM DWELLING AGREEMENT

PARTIES TO DOCUMENT:

**FIRST PARTY: RICHARD F. EVANS, MANAGER OF KOHALA
ORCHARDS LLC**

SECOND PARTY: COUNTY OF HAWAII

PROPERTY DESCRIPTION:

TMK: (3) 5-4-003:002

ADDITIONAL FARM DWELLING AGREEMENT

THIS AGREEMENT made and executed this 22nd day of July, 2022, by and between Richard F. Evans, Manager of Kohala Orchards LLC, hereinafter referred to as the "First Party," whose mailing address is P.O. Box 1139, Kapaau, HI 96755, 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) 5-4-003:002 situated within the State Land Use Agricultural district and zoned Agricultural (A-3a) (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 the 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 dwellings.
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

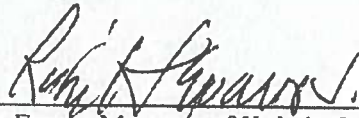
Hawai'i and County laws and rules and regulations change to authorize said farm dwelling, upon request of the First Party, its successors, heirs, personal representatives and assigns, this Agreement may be reconsidered for possible amendment and/or severance.

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]

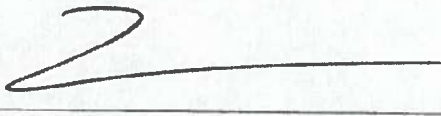
IN WITNESS WHEREOF, the parties have executed this agreement on the day and year first above written.



Richard F. Evans, Manager of Kohala Orchards LLC,
Legal Owner

FIRST PARTY

COUNTY OF HAWAII

By 

Zendo Kern
Its Planning Director

SECOND PARTY

STATE OF HAWAII)
) SS.
COUNTY OF HAWAII)

On this 19th day of July, 2022 before me personally appeared Richard F. Evans (Manager of Kohala Orchards 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: Debora S. Hart

Name: DEBORA S. HART

Notary Public, State of Hawaii
3rd Judicial Circuit
My commission expires: 4-1-2025

(Official Stamp or Seal)

NOTARY CERTIFICATION STATEMENT

Document Identification or Description:

Doc. Date: Undated @ notary

No. of Pages: 6 [including exhibits]

Jurisdiction: 3rd

Debora S. Hart
Signature of Notary

7-19-2022
Date of Notarization and
Certification Statement

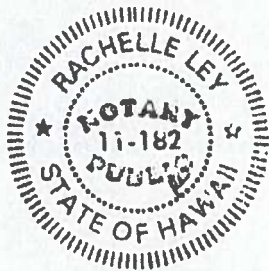
DEBORA S. HART

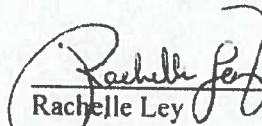
Printed Name of Notary Comm Exp: 4-1-2025 (Official Stamp or Seal)



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

On this 22nd day of July 20 22, before me personally appeared Zendo Kern, to me personally known, who, being by me duly sworn, did say that Zendo Kern 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 Zendo Kern acknowledged the instrument to be the free act and deed of said Planning Department, County of Hawai'i.




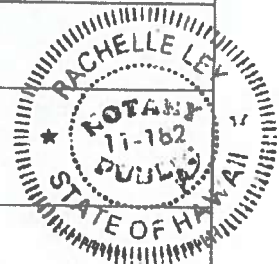


Rachelle Ley

Notary Public, State of Hawai'i
Third Judicial Circuit

My Commission Expires: June 12, 2023

Document Date:	<u>July 22, 2022</u>	No. of Pages:	<u>6</u>
Notary Name:	<u>Rachelle Ley</u>	Third Judicial Circuit	
Doc. Description:	<u>Additional Farm Dwelling Agreement</u>		
	<u>Tax Map Key (3) 5-4-003:002</u>		
Notary Signature		Date	<u>7/22/2022</u>



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

July 1, 2022

Kohala Orchards LLC
P.O. Box 1139
Kapaau, HI 96755

Dear Richard Evans:

Additional Farm Dwelling Agreement Application (PL-AFD-2022-000024)

Applicant: Kohala Orchards LLC
Owner: Kohala Orchards LLC f/k/a Evans Lands LLC,
State Land Use: Agriculture
County Zoning: Agricultural (A-3a)
Land Area: 3.068 acres
TMK: (3) 5-4-003 002

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) Ongoing agricultural activities:
 1. Pineapple, ulu, citrus & Mango, avocados, hardwood trees Management
 - (b) The labor man-hours for the above ongoing activities are: 100-260 hours per week.
4. In additional support, proof of Agricultural Dedication were provided.
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-12-001213) approved on December 29, 2014, 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:
 - (a) Department of Water Supply: (Memorandum dated May 19, 2022): Attached as Exhibit 1
 - (b) Department of Health (Memorandum dated May 13, 2022): Attached as Exhibit 2
 - (c) Real Property Tax Office: No Comments were received.

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 dwellings 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.

Kohala Orchards LLC
July 1, 2022
Page 3

5. Your Additional Farm Dwelling Agreement has been approved based on your existing 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.** 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 June 30, 2024.** Failure to secure a building permit for this additional farm dwelling on or before June 30, 2024 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.

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

Sincerely,

Zendo Kern

Zendo Kern (Jul 5, 2022 08:23 HST)

ZENDO KERN
Planning Director

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



COH PLANNING DEPT
MAY 20 2022 PM 2:19

DEPARTMENT OF WATER SUPPLY • COUNTY OF HAWAII

345 KEKŪANAŌ'A STREET, SUITE 20 • HILO, HAWAII 96720
TELEPHONE (808) 961-8050 • FAX (808) 961-8657

May 19, 2022

TO: Mr. Zendo Kern, Director
Planning Department

FROM: Keith K. Okamoto, Manager-Chief Engineer

SUBJECT: Additional Farm Dwelling Agreement (PL-AFD-2022-000024)
Applicant – Kohala Orchards LLC
Tax Map Key 5-4-003:002

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

Please be informed that the subject parcel is served by an existing 5/8-inch meter (Account No. 750-06480) 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 system 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, transmission, and distribution facilities, would be required. Currently, sufficient funding is not available from the Department for such improvements and no time schedule is set.

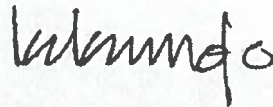
Therefore, the Department has no objections to the proposed application, subject to the applicant understanding and accepting that the Department cannot provide service to the proposed additional farm dwelling. Should the application be approved, all dwellings shall not share the existing meter, and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

Further, as the applicant indicates that there is existing and proposed agricultural activity within the subject parcel, a reduced pressure type backflow prevention assembly must be installed (if one does not already exist) within five (5) feet of the existing meter on private property. The installation of the backflow prevention assembly must be inspected and approved by the Department before commencement/continuation of water service. A copy of the Department's backflow prevention handout is attached to help the applicant understand this requirement.

Mr. Zendo Kern, Director
Page 2
May 19, 2022

Should there be any questions, please contact Mr. Troy Samura of our Water Resources and Planning Branch at (808) 961-8070, extension 255.

Sincerely yours,



Keith K. Okamoto, P.E.
Manager-Chief Engineer

TS:dfg

copy - Kohala Orchards LLC (w/copy of backflow prevention handout)
DWS Cross Connection Section
DWS Customer Service Sections (Hilo and Waimca)



STATE OF HAWAII
DEPARTMENT OF HEALTH
P.O. BOX 916
HILO, HAWAII 96721-0916

MEMORANDUM

DATE: May 13, 2022

TO: Mr. Zendo Kern
Planning Director, County of Hawaii

FROM: Eric Honda
District Environmental Health Program Chief

SUBJECT: Additional Farm Dwelling Agreement Application (PL-AFD-2022-000024)
Applicant: Kohala Orchards LLC
Owner: Evans Lands LLC
SLU: Agricultural
CZ: Agricultural (A-3a)
Land Area: 3.068 acres
TMK: 5-4-003:002

The Health Department found no environmental health concerns with regulatory implications in the submittals.

State of Hawaii
Department of Land & Natural
Resources
Bureau of Conveyances
1151 Punchbowl St, Honolulu HI 96813

Receipt

ABSTRACT

Received by: CTHOMHH

Package: 12063725

RICHARD EVANS

A-82480423	AGM	\$41.00
Total:		\$41.00
Check	151	\$41.00

Paid by: RICHARD EVANS

Thank you

August 1, 2022 10:34 AM

Doc A - 82480423

August 1, 2022 10:34 AM