

PETITION FOR A CONTESTED CASE HEARING
BOARD OF LAND AND NATURAL RESOURCES

1. Name: Kamakani 'O Kohala Ohana, Inc. dba Kako'o Phone: 808-889-0227
2. Address: P.O. Box 1269, Kapa'au, HI 96755
3. Attorney (if any): Not At This Time
4. Address:
5. Subject Matter: Conservation District Use Application HA-3269;
TMK (3) 5-7-001:005 Cohen residence, Pao'o, North Kohala
6. Date of public hearing / Board meeting: April 28, 2006
7. Legal authority under which hearing, proceeding or action is being made: Hawaii State Constitution, Article XI - 1; Article XI - 9; Hawaii Revised Statutes 7-1, 264-1; HRS 46-65; HRS 205A-2; Hawaii Administrative Rules Title 13, Department of Land and Natural Resources, Subtitle 1, Chapter 5, Conservation District.
8. Nature of your specific legal interest in the above matter, including tax map key of property affected:
 - 8.1 Kamakani O Kohala Ohana (Kako'o) is a 501(c)(3), non-profit membership organization based in North Kohala. It's members include many hikers, fisherman, swimmers, surfers, kayakers and divers who for a long time consistently and without impediment accessed the coastal lands and waters of Pao'o and specifically have used as their own for ocean access and recreation the parcel subject of this application TMK (3) 5-7-001:005.
 - 8.2 Kako'o and its members are entitled to environmental review under Chapter 343, Hawaii's Revised Statutes, which chapter guarantees consideration of environmental concerns. The application calls for relocation of a State-owned jeep road and presumably surrender of the land under the present road to the applicant. This action should have triggered preparation of and Environmental Impact Statement.
 - 8.3 Kako'o can assist the board in developing a more complete record which includes testimony, including expert testimony, and other evidence presented by and on behalf of community residents in North & South Kohala and other persons actually affected by the proposed action.

The public currently enjoys both lateral and perpendicular vehicle and pedestrian access across the subject property based on custom, implied dedication, prescription and public easement.

9. The specific disagreement, denial or grievance with the above matter.

9.1 Considering the overall environmental, recreational and scenic/open space impacts of the proposed single family residence, our specific disagreement is that the applicants plans in the conservation district in North Kohala does not reflect the environmental, recreational and scenic/open space interests of "substantial public interest" for all of our members that hike, fish, kayak, swim, snorkel, surf, dive and drive within the area which is the subject of the applicants CDUA.

9.2. The application does not identify the significant value of this parcel as one of only a few portals to the sea enjoyed by our members and the public.

9.3. The application talks of public access only in general terms and does not state specifically the location of shoreline hiking trails and perpendicular vehicular and pedestrian access to the beach at Pao'o.

9.4. Relocation of the current jeep road to a location off the property would create problems unidentified in the application. Specifically: 1. moving of the boundary line between Conservation and Agriculture land 2. moving of a State-owned access without proper public hearings 3. conveyance of State land to private ownership without proving primary public need or that there will be no impairment of the public interest.

9.5 Location of the residence so close of the certified shoreline on a rocky and steep slope would preclude a shoreline pedestrian trail thus denying our members and the public access to fishing and recreation.

9.6. Granting of the roadway easement to the property from Akoni Puli Highway was improper and did not follow DLNR rules.

9.7. The high-walled compound of seven separated structures proposed by the applicant denies our members protection for sprawling development of conservation land as outlined in Article 4 of the Conservation District Rules.

9.8. The landing at Pao'o has and continues to be used for navigational purposes. The past and possible future use of the protected waters of Pao'o for the landing of small boats require the State to assess and protect this resource. The beach is recognized and used by kayakers, including our members, as one of the few places to come ashore along the Kohala leeward coast.

10. Outline of specific issues to be raised:

10.1 The proposed single family residence lies within the Conservation District in the North Kohala District and is not consistent with the purpose of the resource subzone of the Conservation District.

10.2 The proposed land use does not comply with the provisions contained in Chapter 205A, Hawaii Revised Statutes (HRS), entitled "Coastal Zone Management".

Section 205A-2; Objectives and Policies. Especially recreational and scenic and open space resources.

11. Outline of basic facts:

11.1 Adverse Impact to Recreational Activities

This proposed land use in the Pa'ao Ahupuaa is not consistent with the purpose of the Conservation District and the Public Trust Doctrine. By Public Trust one means the right of the people to have lands, waters and living resources protected by the state for their use. The principle that upholds these rights is called The Public Trust Doctrine. The object of the Conservation District Resource Subzone is "to ensure the sustained use of the natural resources of those areas." Pa'ao is a public resource used by the people of Kohala since it was first settled. It is not a piece of land. It is a 'Lihikai,' a linking of land and sea. It is a portal through which the people of Kohala have been going into and coming out of the ocean for generations.

11.2 Adverse Impact to Scenic & Open Space Resources:

Scenic Beauty is one of the many reasons that residents and tourists enjoy the Kohala Coast. This natural beauty is part of North Kohala's resource that must be preserved. The scenic open space beauty of the coast has been acknowledged by federal, state and county governments in numerous studies. From Puakea to Kawaihae there is no private shoreline structure visible from the coastal and mountain highways or from the ocean. The visual impact that the single family residence will have on the existing coastline view plane along Akoni Pule Highway is not consistent with the County of Hawaii's General Plan (GP), The Northwest Hawaii Community Development Plan nor is it consistent with over 30 years of work that the people of North Kohala have dedicated their time to keeping this section of the coast free of any development, including single family residences. The application does not address the cumulative effects of the proposed vacation home on other construction along the now open shoreline as required by the Public Trust Doctrine.

12. The relief or remedy to which you seek or deem yourself entitled:

Because the parcel at Pao'o has such high public value for its continuous public recreational use, the density of historic and spiritual sites and its open space viewplane

value, the application for a residence should be denied. The state and county should begin partnership efforts with private trusts to purchase the land for its resource preservation.

Date: 4/28/06 Mark Grandoni Mark G
President/Kako'o

The above-named person hereby requests and petitions the Board of Land and Natural Resources for a contested case hearing in the matter described above.