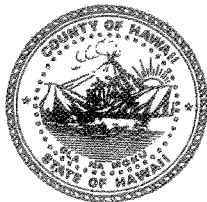


Harry Kim  
Mayor



Christopher J. Yuen  
Director  
Brad Kurokawa, ASLA, LEED™ AP  
Deputy Director

## County of Hawaii

### PLANNING DEPARTMENT

Aupuni Center • 101 Pauahi Street, Suite 3 • Hilo, Hawaii 96720  
Phone (808) 961-8288 • Fax (808) 961-8742

November 30, 2008

Bill Shontell, Project Director  
Kohala Preserve Conservation Trust, LLC  
P.O. Box 335  
Hawi, HI 96719

Duane Kanuha  
Kohala Preserve Conservation Trust LLC  
101 Aupuni Street, Suite 206  
Hilo, HI 96720

Dear Mr. Shontell and Mr. Kanuha:

Subject: SMA 341, Rez. Ord. 90-007, Rez. Ord. 93-109

This letter discusses the major issues with respect to the Mahukona/Kapaanui development, particularly the time for performance under the rezoning ordinances, Ord. 90-007 and 93-109, and SMA Permit No. 341. It is not an exhaustive discussion of all issues.

It is meant to address your letter of Oct. 1, 2008, your progress report of Nov. 7, 2008, and some of the issues discussed in our meeting on Oct. 24, 2008.

The main time conditions in Ord. 93-109, the Mahukona portion of this project, provide that "construction of the hotel and all interior access roads providing access to the Public Shoreline Access Areas shall be completed within five years from the effective date of the change of zone." As written previously, because of the litigation over this zoning ordinance, the effective date of zoning was the termination of the appeal, July 14, 1999, although there were references to an earlier "effective date" based upon water availability referred to in earlier correspondence, including earlier progress reports. As stated in previous letters and the recent August 25, 2008 agreement, the planning director had extended time for performance of those conditions to Oct. 14, 2008. There remains the possibility of a further administrative time extension to July 14, 2009, which will have to be decided upon by the incoming planning director.

The main time condition for the Kapaanui portion of the project provides that final subdivision approval "shall be secured within one year from the date of tentative subdivision approval". This ordinance, 90-007, does not contain the usual provisions for administrative time extensions and states, in condition "S", that the applicant may apply for time extensions with the County Council. Tentative subdivision approval was granted Nov. 28, 2008, so the deadline for securing final subdivision approval is Nov. 28, 2009. The Planning Department does not agree that Kohala Preserve secured a valid "default" tentative subdivision approval in May 2008. Unless otherwise determined by the Board of Appeals and/or subsequent court action, we will use the Nov. 28, 2008 date, rather than the earlier one, which actually produces an earlier deadline for final subdivision approval.

The Planning Department had also explained by letter dated March 12, 2008, that if Kohala Preserve was relying upon the physical completion of the six unit hotel to satisfy that portion of Ord. 93-109, this would have to be accompanied by the bonding of the Mahukona and Kapaa park improvements. The ordinance contemplated that the occupancy and completion of the hotel would occur around the same time and that the Mahukona and Kapaa parks would be either constructed, or their construction bonded, at the same time that Ord. 93-109 satisfied the hotel construction time condition.

While considerable progress has been made toward finalizing the park improvements, at our Oct. 24 meeting you mentioned difficulty in getting a figure for bonding the park improvements from the Department of Parks and Recreation. We have been able to confirm with the Department that the bonding of the agreed-upon improvements for \$3.5 million, which will include a temporary water system using tanks, would be acceptable. The tentative subdivision approval requires that the parks be connected to the subdivision water system when it is built.

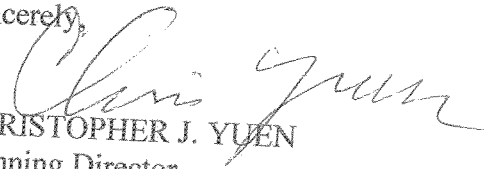
The P&R Department must also submit the draft EA for park improvements to the OEQC, then apply for the necessary SMA permit.

At this point, Kohala Preserve can try meet the time conditions in the two ordinances, by obtaining an administrative time extension to Ord. 93-109 to July 14, 2009, and meeting the applicable conditions in the ordinance, which would include the bonding of the Mahukona and Kapaa Park improvements. It would also have to obtain final subdivision approval for the portion of the subdivision covered by Ord. 90-007 by Nov. 28, 2008. Although that ordinance only applies to a portion of the land covered by the tentative subdivision approval, much of the necessary infrastructure, such as water supply and road access, is common to both the area covered by Ord. 90-007 and 93-109, so we do not see how final subdivision approval could be secured for just Ord. 90-007.

We must also mention that if the park improvements and final subdivision approval are secured by a bond, that the actual construction of the improvements must follow in due course. The bond secures the actual construction; it is not a holding device to extend time. There may be some excusable delay in beginning construction of the parks because of the need for the SMA permits, but they would have to be built.

On the other hand, if Kohala Preserve goes to the County Council to obtain time extensions, it would obviously not be fair for the County to require the bonding of the park improvements before the Council decided whether or not to extend time.

Sincerely,



CHRISTOPHER J. YUEN  
Planning Director

Wpwin60/chris08/mahukona summary2

Kamakani O Kohala 'Ohana  
SMA 341  
REZ files  
SUB 88-000111  
Roz Newlon  
Jeff Darrow  
Allen Salavea  
James Komata, Parks & Rec.