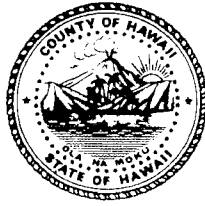


Harry Kim
Mayor



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

County of Hawaii

PLANNING DEPARTMENT

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November 28, 2008

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

Dear Mr. Shontell:

REVISED TENTATIVE APPROVAL
SUBDIVIDER: KOHALA PRESERVE CONSERVATION TRUST, LLC
“Kohala Preserve Makai - North Subdivision”
Proposed Consolidation of Parcels 9-C, 9-D, 11 and R-1,
And its Subdivision into Lots 1 to 48, Inclusive,
And Roadway Lots R-1 to R-5, Inclusive,
Kapaaunui, Kou, Kamano, Mahukona 1st and 2nd, North Kohala, Hawai'i
TMK: 5-7-002:011, 5-7-003: 003 & 010 (SUB-88-000111)

Please be informed that Revised Tentative Approval of the third submittal of the second revised preliminary plat map dated May 5, 2008, is hereby granted with modifications and conditions.

Improvements within the State right-of-way will likely be recommended by the State Department of Transportation (DOT) after review of the submittal of the construction drawings. This would constitute the use of public lands and will require the preparation of an environmental assessment that meets the requirements of Chapter 11-200, Hawai'i Administrative Rules (HRS). Please contact the Office of Environmental Quality Control for compliance issues with regard to HRS Chapter 343. The Planning Department will be the approving agency for the environmental assessment. This revised tentative approval is subject to compliance with Chapter 343 requirements prior to final subdivision approval. No grading, grubbing, or construction of subdivision infrastructure, other than park improvements which may be authorized by separate environmental assessment, shall occur prior to compliance with Chapter 343.

For the portion within Ord. 90-007 (Lots 1-43), this revised tentative approval is the first increment as referred to in Condition “B” of Ord. 90-007, which limits the first increment to 130 acres. The A-1a zoning of the remaining increment does not become effective until Condition “B” has been complied with.

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Ord. 90-007 provides that final subdivision approval shall be secured within one year of tentative subdivision approval, and does not permit an administrative time extension. We recommend that the subdivider evaluate the likelihood of being able to comply with this and other time conditions of Ord. 93-109 and SMA Permit No. 341 and decide whether to seek time extensions as needed from the County Council and Planning Commission prior to commencing construction.

The subdivider is now authorized to prepare detailed drawings of the subdivision plan in accordance with Chapter 23, Subdivision Control Code, County of Hawaii, as modified. Before final approval can be granted, the following conditions must be met:

1) Water System

- a) Construct a private water system to service all lots within the proposed subdivision meeting with the approval of the Department of Water Supply (DWS).
- b) Water system to be designed to deliver water at adequate pressure and volume under peak-flow conditions in accordance with the Water System Standards, State of Hawaii, and the Rules and Regulations of the Department of Water Supply.
- c) Submit water system construction plans for approval by affected agencies.
- d) Pay review, testing, inspection and other appropriate fees as required by the Department of Water Supply.
- e) Provide fire hydrants as required by the DWS. (Ord. No. 90-007, Condition L)
- f) Extend water line to Kapaa and Mahukona Parks and connect park facilities to those lines.

2) Drainage

The Mahukona Environmental Impact Report (April 1991) describes nine offsite drainage basins mauka of the project area that convey water crossing the Akoni Pule Highway at eleven culverts. Of the nine drainage areas, three are south of the Government Road to Mahukona Harbor and do not directly affect the area covered by this subdivision. The projected 100 year flow for the drainage ways is shown on Table 3 of the Environmental Impact Report. Although the subdivision is designated as Flood Zone "X", several of the drainage ways appear to carry sufficient water that they must be shown as drainage ways in the subdivision map.

- a) Identify all watercourses and drainage ways as drainage easements and designate areas within as "approximate areas of flood inundation."
- b) Additional storm runoff due to development shall be disposed within the subdivision and shall not be discharged onto adjacent properties or roadways. For planned drywells, satisfy Department of Health (DOH) drywell requirements, including issuance of an underground injection control (UIC) permit to the subdivider.
- c) Obtain and comply with the conditions of a National Pollutant Discharge Elimination System (NPDES) Permit or DOH Letter of Determination.
- d) A drainage system shall be installed meeting with the approval of the Department of Public Works (DPW) and Department of Transportation (DOT), Highways Division. (Ord. No. 93-109- Condition F and SMA Use Permit No. 341-Condition No. 10).

3) Access and Roadway Improvements

- a) Prepare a revised/updated Traffic Impact Analysis Report (TIAR) for review and approval by the DOT. The subdivider shall construct any and all improvements required by the DOT through approval of the TIAR, which shall include channelization of the main subdivision entrance (Ord. 93-109, Condition Q(2)).
- b) Subdivision roadways shall be constructed to the minimum requirements of the Subdivision Code which includes requirements for intersection angles, corner radius, alignment, grades and curves (Division 4, Article 3 and Division 2, Article 6, Chapter 23, HCC).
- c) For Roadway Lots Rd-1 through Rd-5, construct a minimum 20-foot wide dedicable pavement with paved shoulders and drainage swales within a minimum 50-foot wide right-of-way conforming to DPW Standard Detail R-33 and R-34. In the alternative, for these roads, subdivider may elect to construct these under the standards for "resort streets" under Sec. 23-95.1, provided, however, that said lots shall be constructed with a minimum 20-foot wide dedicable pavement with grass shoulders and grass drainage swales within a minimum 50' right-of-way, and shall otherwise conform to DPW Standard Detail R-33 and R-34. Any roads constructed to non-dedicable standards shall be retained in private ownership, subject to public access rights as set forth herein and in the approved public access plan.
- d) For Roadway Lots Rd-2 & Rd-4, construct dedicable turnarounds in conformance with Sec. 23-48 of the Hawaii County Code (HCC) and DPW Standard Details R-33 & R-34.
- e) Provide a 10-foot wide "no vehicular access permitted" easement along the entire frontage of the Mahukona-Hawi Road exclusive of the Roadway Lot Rd-1 access point.
- f) Install streetlights/signs/pavement markings as required by the Traffic Division, DPW and/or the State DOT. The design of the project lighting shall minimize the impact on educational opportunities at the celestial navigational heiau identified as "Ko'aholomoana" (Ko'a Heiau) and in addition to the requirements of Ordinance No. 88-122. (Ord. No. 93-109, Condition I)
- g) Submit a proposed street name conforming to the adopted street naming policy of the County of Hawai'i.
- h) Submit construction plans and drainage report for review and comment.
- i) Access to the Mahukona-Hawi Road shall meet with the approval of the DOT. (Ord. No. 90-007, Condition O)
- j) Highway improvements required from this application shall be provided at no cost to the State and shall conform to Hawaii Statewide Uniform Design Manual for Streets and Highways and the Specifications for Installation of Miscellaneous Improvements within State Highways.

4) Public Vehicular, and Pedestrian Access and Parking Improvements

- a) For Public Access Easement 3, construct minimum 20-foot wide dedicable pavement with grassed shoulders and swales within the 50-ft. easement conforming to DPW Standard Detail R-34.
- b) For that portion of Easement 3 that is 12 feet wide as well as Public Access Easements 5 and 7, improve with a 12-foot wide pavement and 4' gravel shoulders to a public parking lot that is fully paved and striped in accordance with the requirements of Sections 25-4-53 & 54 of the Zoning Code.

- c) The final plat map shall clearly note that all lands situated within the State Land Use Conservation District are encumbered as a shoreline public access easement.
 - d) All pedestrian access easements shall be 10' wide rather than 3' wide. Construct walking paths as shown for Easements 8, 9, and 10, generally conforming to Na Ala Hele guidelines for trails.
 - e) Apply for all necessary DLNR and conservation district approvals, and enter into agreement with Planning Department to secure actual construction, for additional pedestrian trails within 10' wide easements, generally conforming to Na Ala Hele guidelines for trails, as shown on Fig. 4, "Mahukona Lodge Shoreline Access Plan", 3rd revision, Oct. 1996: Lateral shoreline pedestrian trail makai of railroad right-of-way from Mahukona Harbor to Maka o Hule Point, makai of railroad right-of-way at "Nishimura Bay", and across Lot 45 to connect with Easement 10.
 - f) Per Kehena Beach, Inc. v. Hannigan, Civ. No. 5469, Stipulation re Access, show 10' right-of-way along southern boundary of Kapaanui, T.M.K. No. 5-7-2:11, from Akoni Pule Highway to the conservation district public access easement, unless relocation to subdivision roads is approved by the State of Hawai'i. The County of Hawai'i consents to the extinguishment of this easement after implementation of public access through subdivision roads under the approved public access plan.
 - g) Public vehicular, bicycle, and pedestrian access shall be allowed along Rd-1, Rd-3, and Rd-5, consistent with the approved public access plan.
 - h) Apply for all necessary DLNR and conservation district approvals, and enter into agreement with Planning Department to secure actual construction of public access trail from Easement 4 parking area to shoreline as shown on approved public access plan, or designate existing dirt road as easement. Planning Director recommends relocation of Easement 4 to flatter ground approximately 100' south to reduce need for grading.
 - i) The access to Easement 4 (parking area) as shown on the preliminary plat map is to be vehicular through Rd-1, Rd-3, Rd-5, and Easement 5. According to the approved Public Access Plan, the access was supposed to be through Rd-4 and an easement through Lot 21. (The lots and roads were not designated at the time of the Public Access Plan but this is the location of the access on the Public Access Plan using the designations in the preliminary plat map.) It has been explained to the satisfaction of the Planning Department that the access as shown in the Public Access Plan is not desirable due to steep slopes on Lot 21, and the Director hereby approves this modification to the Public Access Plan.
- 5) The subdivider shall finalize and implement a historic sites preservation plan, to be approved by the State Historic Preservation Division, which includes data recovery, site preservation and site monitoring, prior to the issuance of Final Subdivision Approval.
 - 6) A Burial Preservation Plan has been prepared and submitted to the DLNR-SHPD for review and approval upon consultation with the Burial Council for the 23 burial sites identified within the project area. The requirements of an approved Burial Preservation Plan shall be implemented by the subdivider and satisfied prior to the issuance of Final Subdivision Approval, which includes all necessary preservation easements to be shown and identified on the final plat map.

- 7) All easements affecting proposed lots shall be identified for its purpose and to which proposed lot(s) and/or grantee(s) the easement is in favor of. This shall be shown on the final plat map.
- 8) Revise map, to show on final subdivision map: A-5a zones north of "Open" zone and near government road to Mahukona Harbor, and label remaining A-1a zone area within Ord. 90-007 as "A-1a, conditional zoning."
- 9) Comply with all conditions of approved Change of Zone Ordinances 86-82 (as amended by Ordinance No. 90-07) and 93-109 (REZ 531 & 747, respectively) and Special Management Area (SMA) Use Permit No. 341, particularly the following:
 - a) Final Subdivision Approval shall be secured within one (1) year from the date of this revised tentative approval, for the portion rezoned by Ord. 90-007, and improvements necessary to support the subdivision in the area rezoned by Ord. 90-007, unless said ordinance is amended. (Ord. No. 90-007 Cond. No. C.)
 - b) Construction of road and drainage improvements, as required by the DPW and DOT, and including underground telephone, water, electrical and cable T.V. utility lines shall commence within one (1) year from the date of approval of the construction plans. (Ord. No. 90-007 Cond. No. D and SMA Use Permit No. 341 Cond. No. 10)
 - c) Comply with the ground and near-shore water quality monitoring plan. (Ord. No. 90-007 Cond. No. E and SMA Use Permit No. 341 Cond. No. 14)
 - d) All residential, commercial and hotel units and uses shall be connected to a sewage treatment plant meeting with the approval of the appropriate governmental agencies. The sewage treatment plant and its transmission system shall be constructed or bonded prior to the issuance of Final Subdivision Approval, and shall be completed prior to occupancy of any residential, commercial, or hotel units. It shall be provided with emergency electrical generation capabilities. (Ord. No. 90-007, Condition M; Ord. No. 93-109, Condition R and SMA Use Permit No. 341, Condition No. 13).
 - e) Submit a landscaping plan for the easement area adjacent to the Akoni Pule Highway to the Planning Director for review and approval. (Ord. No. 90-007 Condition F and SMA Use Permit No. 341, Condition No. 8)
 - f) Underground telephone, water, electrical and cable T.V. utility lines shall be constructed throughout the property; no overhead utility lines shall be permitted. (Ord. No. 90-007 Cond. No. G and SMA Use Permit No. 341 Cond. No. 9)
 - g) Restrictive deed covenants to be recorded with the Bureau of Conveyances regarding the size, design and construction material and the height limit of structures (35' within the area covered by Ord. 90-007) and regarding the prohibition of the construction of a second dwelling unit on each lot. (Ord. No. 90-007 Cond. No's. I & J, Ord. No. 93-109 Cond. No. S)

- h) Participate with the DOT on regional highway improvements on a pro rata basis, including, at a minimum, improvements to the intersections of the Akoni Pule Highway within the North Kohala region; channelization and street lighting of the project access to Akoni Pule Highway; dedication of additional right-of-way to the State along the Akoni Pule Highway fronting the project site; installation of guardrails, where needed, along the highway right-of-way to protect lower lots from highway traffic; and the closing of all unused access points to Akoni Pule Highway fronting the project area. (Ord. No. 93-109 Cond. No. Q)

Should any remains of historic sites, such as rock walls, terraces, platforms, marine shell concentrations or human burials be encountered, work in the immediate area shall cease and the Department of Land and Natural Resources-Historic Preservation Division (DLNR-HPD) shall be immediately notified. Subsequent work shall proceed upon an archaeological clearance from the DLNR-HPD when it finds that sufficient mitigative measures have been taken. (Ord. No. 90-007 Cond. No. Q, Ord. No. 93-109 Cond. No. E and SMA Use Permit No. 341 Cond. No. 5)

- 6) Property Tax Certification. Submit written proof that all taxes and assessments on the property are paid to date.
- 7) Surveyor's Certification. Place property markers in accordance with the final plat map. Surveyor shall submit certification upon completion.
- 8) Final Plat Map. Submit **ten (10)** copies of the final plat map prepared in conformity with Chapter 23, Subdivisions, with sufficient time to complete review to permit final subdivision approval to be issued, prior to one year deadline in Ord. 90-007, for the area rezoned by said ordinance. For all other areas, upon written request from the subdivider and for good cause, the director may grant to the subdivider an extension of time within which the subdivider may file the final plat
- 9) If not, revised tentative approval to the second revised preliminary plat map shall be deemed null and void. As part of final plat map submittal, the director request an additional copy of the final plat map be submitted as a ".dwg" or ".dxf" diskette file prepared by CAD software.
- 10) Time Limit. Subdivider shall complete all requirements specified as conditions for revised tentative approval of the second revised preliminary plat map within one year from the date of revised tentative approval. The one year deadline to obtain final subdivision approval applies only to the portion rezoned by Ord. 90-007, and for improvements necessary to support the subdivision within the area rezoned by Ord. 90-007, unless an extended period of time is allowed by amendment to Ord. 90-007. The remaining area shall be subject to the general time limits in the subdivision code, which would allow the subdivider to complete all requirements within three (3) years of revised tentative approval, and an extension of not more than two years may be granted upon timely request by the subdivider.

Please be aware that if at any time during the fulfillment of the foregoing conditions, should concerns emerge such as environmental problems or other problems which were earlier overlooked or not anticipated/accounted for in data/reports available to date, this could be sufficient cause to immediately cease and desist from further activities on the proposed subdivision, pending resolution of the problems. The Planning Director shall confer with the listed officers to resolve the problems and notify you accordingly.

Bill Shontell, Project Director
Kohala Preserve Conservation Trust, LLC
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No final approval for recordation shall be granted until all the above conditions have been met. Subdivider may also secure final approval prior to the construction of improvements required herein by entering into an agreement with the County which conforms to and complies with the requirements of Sections 23-81 through 23-83 of the Subdivision Code.

Land shall not be offered for sale, lease or rent until final approval for recordation of the subdivision is granted by the Planning Director or the proposed subdivision has been issued a preliminary order of registration by the Department of Commerce and Consumer Affairs (DCCA) in accordance with the requirements of Chapter 484, Hawaii Revised Statutes.

There has been considerable legal controversy over subdivisions in the agricultural district, including the recent Kelly, et.al. v. 1250 Oceanside Partners, et.al., Civil No. 00-1-0192K. Because of the state of the law at this time, we recommend that subdividers in the State Land Use Agricultural district consult with, and rely on, independent legal counsel in deciding whether their subdivisions comply with the requirements of Chapter 205, Hawaii Revised Statutes. We also recommend that you advise lot purchasers to consult with, and to rely on, independent legal counsel regarding permissible uses and the effect of Land Use Commission Rule 15-15-25(b), Hawaii Revised Statutes Section 205-4.5, and Hawaii County Planning Department Rule No. 13, on the requirements to build and occupy dwellings on lots within the subdivision. Specifically, LUC Rule 15-15-25(b) requires dwellings within the areas in the Agricultural District in this subdivision to be "farm dwellings," because this subdivision will have been created after June 4, 1976.

Should you have any questions, please feel free to contact Jonathan Holmes or Daryn Arai of this department.

Sincerely,



CHRISTOPHER J. YUEN
Planning Director

JRH/CJY:lnm

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Enc.: Second Revised PPM (05-05-08)

Bill Shontell, Project Director
Kohala Preserve Conservation Trust, LLC
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xc: Manager, DWS
 Director, DPW
 District Environmental Health Program Chief, DOH
 District Engineer, DOT
 DPW-ENG-KONA
 Director, DEM
 DLNR-Historic Preservation Division (Hilo)
 Pamela K. Figueroa, Project Coordinator, R.M. Towill Corporation
 Ryan M. Suzuki, LPLS, R.M. Towill Corporation
 Kamakani O Kohala 'Ohana
 Roz Newlon, Planner, Planning Dept.-Kona
 SMA 341; REZ 531 (Ord. 90-007)