

Petition for Intervention

Zoning Board of Appeals meeting of Oct 10, 2008

Petitioner: Kohala Preserve Conservation Trust LLC (BOA 08-000070)

P.O. Box 335, Hawi HI 96719

Appeal to the decision by the Planning Director dated July 3, 2008 regarding land at Mahukona, North Kohala TMKs (3) 5-7-2:11 and 5-7-3:3 & 10

Name of Intervener: Kamakani O Kohala Ohana -KAKO'O

KAKO'O is a federally registered 501(c)3 non-profit community organization whose mailing address is P.O. Box 76, Hawi HI 96719. KAKO'O was formed in October 1995 by the merging of several North Kohala community groups dedicated to preservation of natural resources of North Kohala including preservation of historic sites, coastal and mountain access, clean air, water and ocean as well as sustainable development. The largest group in the merging was Hui Lihikai -- Citizens for Protection of the North Kohala Coastline(CPNKC) with 400 member families which was formed in 1898. KAKO'O and the Citizens group have an extensive history in participation in both county and state planning. They have each been granted standing in numerous court cases and contested case hearings.

In the case of this project, the Mahukona subdivision and resort development, members of the group have been participants in the planning process from the beginning with former owners Chalon International and after bankruptcy Surety Kohala Corporation. Members are neither part owners of the land or adjacent land. On June 23, 1995 CPNKC filed a complaint in state court protesting denial by the Planning Commission of the group's standing to call for a contested case in the matter of the re-zoning and SMA permits for the development. The case was argued in court with the Circuit Court deciding on March 17, 1997 that CPNKC does have standing in the matter of Mahukona development and the Supreme Court upholding the decision of CPNKC standing on July 13, 1999. A summary of the case is attached.

The full decision of the Supreme Court states:

In the instant case, Citizens asserts personal and special interests sufficient to invoke judicial resolution under HRS § 632-1. Citizens contends that, inasmuch as its members reside "in close proximity" to the proposed Mahukona project and are "long time and frequent users" of the Mahukona coastline, injury to its members' quality of life is threatened. It asserts that the Mahukona area is the "primary ocean recreation area" and "the only place where people may access the water or safely

launch a boat for approximately 29 miles of the Kohala coastline." According to Citizens, Mahukona is a "community recreational resource" used for "picnics, . . . swimming and boating . . . [F]ishermen also use shore areas along the length of the project's ocean frontage." In addition, "Mahukona is . . . the site of a major spiritual center," a "navigational key-way for islands to the south," and a locale for gathering Hawaiian plants and herbs. Citizens urges that the Mahukona project may cause irreversible changes to the North Kohala coastline, affecting vital fishing grounds and causing "degradation of the quality of the near shore marine environment." It argues, therefore, that because its members use the shoreline area "within dozens of feet" of Chalon's proposed structures, "such use is potentially harmed by the project."

All of those conditions still exist. If anything KAKO'O's involvement in Mahukona has increased since the 1999 decision. The group has encouraged the inclusion of the Mahukona land on the county's priority list for acquisition by the Hawaii County Public Access, Open Space and Natural Resource Preservation Commission. In its report of December 2007 Mahukona was listed at the 3rd highest priority for purchase by the county. Also KAKO'O has supported including the land on the State's LegacyLand Act list for preservation. In 2007 KAKO'O along with 5 other Kohala groups wrote to KPCT asking to enter into dialog leading to the possible private or trust purchase of Mahukona land for preservation purposes. Members of KAKO'O have kept track of the permitting process on the resort and subdivision in an effort to keep county and state agencies aware of activities that may be in conflict between agencies.

The vehicular public access along the coast granted by the courts in 1981, 1989 and 1990 has been effectively blocked since 1990. Improvements to Mahukona and Kapa'a Parks have been delayed since 1995 while the county waits for the developer to initiate requirements to fix the parks. The developer has failed repeatedly to live up to time requirement to complete construction. Time extensions for completion of construction on the project expired in February 2006 and again on July 14, 2008. Our group wrote a letter to the Planning Director prior to the July deadline stating numerous specific reasons why the zoning and SMA permits should expire and be voided. It would be in the interest of our members and the Kohala community to let go of this ill-conceived and badly executed resort plan.

In response to the delays the North Kohala Community Development Plan now before the County Council for adoption calls on the county to

" Minimize speculation that drives up land values, property taxes, and the cost of housing; and encourage developers that wish to invest in the long-term health of North Kohala. County permits and approvals for North Kohala, including but not limited to zoning changes, subdivision approvals, and building permits, shall have expiration dates, and these expiration dates shall be adhered to. Any requested extensions of expiration dates shall be carefully evaluated."

Recommendations of the North Kohala CDP went further in calling for the outright purchase of four coastal properties including the land at Mahukona subject to this subdivision. The CDP says:

“The Kohala Coast consists of one of the most intact “cultural landscapes” in the State of Hawaii because of its high density of cultural and archaeological sites. This area, located makai of Akoni Pule Highway, is filled with hundreds of fishing village sites, heiau, and ko’a. Some of this important landscape is subject to the threat of future development because it is privately owned and there are no special land use regulations protecting it. The North Kohala community has identified four such properties, which are privately owned and critical to maintaining the continuous cultural landscape. Thus, it is recommended that those properties be purchased – either in fee or through purchase of conservation easements – by a public entity that can protect them in perpetuity.”

Members of KAKO’O are users of the parks, of the harbor, of the tightly controlled pedestrian coastal trail. They are practitioners of Hawaiian traditional culture and have special knowledge of the historic and cultural sites on the land. Our members will be affected by the decision of the Board of Appeals as it will directly impact our use and enjoyment of the most popular ocean access area of our 29-mile coastline. Members of KAKO’O include experts in the fields of Hawaiian history and culture, reef and near shorewater quality preservation, recreational activities and opportunities of North Kohala. We are available to help the Board in making its decision.

Kanoa Withington

Kamakani O Kohala Ohana – KAKO’O