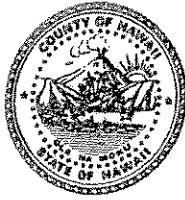


Harry Kim  
Mayor



Christopher J. Yuen  
Director

Brad Kurokawa, ASLA

LEED® AP  
Deputy Director

County of Hawaii  
PLANNING DEPARTMENT

101 Pauahi Street, Suite 3 • Hilo, Hawaii 96720-4224  
(808) 961-8288 • FAX (808) 961-8742

March 31, 2008

Mr. Duane Kanuha, Manager  
KOHALA PRESERVE CONSERVATION TRUST LLC  
101 Aupuni Street, Suite 206  
Hilo, HI 96720

Dear Mr. Kanuha:

**SUBJECT: KOHALA PRESERVE MAHUKONA  
MAHUKONA, KAMANO, KOU AND KAPA'ANUI AT NORTH KOHALA  
TMK NOS. 5-7-02:11; 5-7-03:03 AND 10**

This is in response to your letter dated February 29, 2008, received in our office on March 6, 2008. I apologize for the delay in responding to this letter.

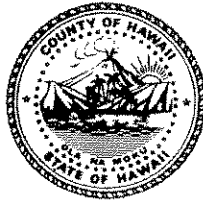
Your letter describes a development program for the Mahukona, Kamano, Kou and Kapa'anui areas covered by rezoning ordinances 93-109 and 86-82, as amended by Ord. 90-07, and by SMA Permit No. 341.

These rezoning ordinances and SMA permit remain in effect. The maximum development of these areas are limited by SMA Permit No. 341 to a 200-240 unit lodge hotel, a 125-150 one-acre lot subdivision, an 18 hole golf course, and related facilities. While a greater number of lots and hotel units is possible under the zoning, the entire area is within the SMA, hence, the lower limit of the SMA permit applies, unless it is amended.

Your letter describes a reduced subdivision consisting of 53 lots. We have also granted plan approval for a small hotel facility of six units.

As stated in your letter, the reduction in the number of lots and hotel units is voluntary on your part and not required by the conditions of the rezoning ordinances and SMA permit. You asked for a statement that the proposed lower density development is allowable under the rezoning ordinances and the SMA permit. It is, although you must still comply with all of the relevant conditions of the ordinances and SMA permit, and the general requirements of the land use laws, such as H.R.S. Chap. 205 and H.C.C. Chap. 23 with

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

September 9, 2008

Mr. Duane Kanuha  
Kohala Preserve Conservation Trust  
P.O. Box 335  
Hawi, HI 96719

Dear Mr. Kanuha:

RE: Final Plan Approval Conditions 3 through 4  
Reception/Admin. and (3) Duplexes consisting of (6) 1-bedroom  
cottages for hotel rooms  
TMK: 5-7-003:010

There are several conditions within your Final Plan Approval dated March 12, 2008 that require updates to the Planning Department. Your letters dated March 27, 2008 and June 26, 2008 covered many of the conditions of the Final Plan Approval. Would you please go through the remaining conditions and provide us with an update at your earliest convenience.

If you have any additional questions, please call Rosalind Newlon of our West Hawaii office at 808-327-3510.

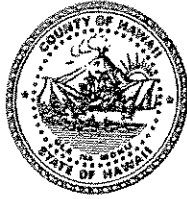
Sincerely,

  
CHRISTOPHER J. YUEN  
Planning Director

RJN:rjn  
K:\Staff\Newlon\Letters\TMK-5-7-3-010-FPA Status.doc  
C w/ ltr: West Hawaii Office

SEP 11 2008

Harry Kim  
Mayor



Christopher J. Yuen  
Director

Brad Kurokawa, ASLA

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Deputy Director

County of Hawaii  
PLANNING DEPARTMENT

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March 31, 2008

Mr. Duane Kanuha, Manager  
KOHALA PRESERVE CONSERVATION TRUST LLC  
101 Aupuni Street, Suite 206  
Hilo, HI 96720

Dear Mr. Kanuha:

**SUBJECT: KOHALA PRESERVE MAHUKONA  
MAHUKONA, KAMANO, KOU AND KAPA'ANUI AT NORTH KOHALA  
TMK NOS. 5-7-02:11; 5-7-03:03 AND 10**

This is in response to your letter dated February 29, 2008, received in our office on March 6, 2008. I apologize for the delay in responding to this letter.

Your letter describes a development program for the Mahukona, Kamano, Kou and Kapa'anui areas covered by rezoning ordinances 93-109 and 86-82, as amended by Ord. 90-07, and by SMA Permit No. 341.

These rezoning ordinances and SMA permit remain in effect. The maximum development of these areas are limited by SMA Permit No. 341 to a 200-240 unit lodge hotel, a 125-150 one-acre lot subdivision, an 18 hole golf course, and related facilities. While a greater number of lots and hotel units is possible under the zoning, the entire area is within the SMA, hence, the lower limit of the SMA permit applies, unless it is amended.

Your letter describes a reduced subdivision consisting of 53 lots. We have also granted plan approval for a small hotel facility of six units.

As stated in your letter, the reduction in the number of lots and hotel units is voluntary on your part and not required by the conditions of the rezoning ordinances and SMA permit. You asked for a statement that the proposed lower density development is allowable under the rezoning ordinances and the SMA permit. It is, although you must still comply with all of the relevant conditions of the ordinances and SMA permit, and the general requirements of the land use laws, such as H.R.S. Chap. 205 and H.C.C. Chap. 23 with

Mr. Duane Kanuha, Manager  
KOHALA PRESERVE CONSERVATION TRUST LLC  
Page 2  
March 31, 2008

respect to the subdivision. There are a number of conditions which must be implemented, such as the improvements to the Mahukona and Kapaa parks. Please see the recent plan approval for the Mahukona hotel units, and the accompanying letter from the Planning Department dated March 12, 2008.

Your letter refers to the recently submitted subdivision map. That preliminary plat map will have to be revised because it does not show how public access to the shoreline is to be accommodated within the subdivision. Also, note that Ord. 86-82 and Ord. 90-07 require incremental subdivision of the property; only 130 acres can be subdivided to the smaller lot sizes allowed by that zoning in the first increment. Please note that the plan approval gives a 60 day time period to submit this preliminary plat map.

You also raise some issues with respect to requirements under Chap. 343, Hawai'i Revised Statutes. The Planning Department had previously concluded that the project did not trigger an environmental assessment or environmental impact statement under Chap. 343 if the development of the golf course was abandoned, so that there would be no underpass. We are aware, however, that the State Dept. of Transportation is currently requiring Chap. 343 compliance for work by private parties within the state highway right-of-way, and when this is connected with a subdivision, requiring that the County Planning Department be the accepting agency. For this reason, we will require Chap. 343 compliance prior to tentative subdivision approval, unless we get a written statement from the DOT that they will not require an EA or EIS for work within the right-of-way for this project.

I hope this satisfactorily answers the questions in your letter. If you have any further questions, please schedule a meeting with the Planning Director.

Sincerely,



CHRISTOPHER J. YUEN  
Planning Director

CJY:pak

Wpwin60/Chris08 - Kanuha - Mahukona Limits Easement

Mr. Duane Kanuha, Manager  
KOHALA PRESERVE CONSERVATION TRUST LLC  
Page 3  
March 31, 2008

cc: Mr. Daryn Arai  
Planning Department – Kona  
REZ 531  
SMA 230  
SMA 341  
USE 111  
SUB 88-111

2008 MAR 6 AM 10:49

PLANNING DEPARTMENT  
COUNTY OF HAWAII

**KOHALA PRESERVE CONSERVATION TRUST LLC**

101 AUPUNI STREET, SUITE 206 HILO, HI 96720. PO BOX 335 HAWI, HI 96719  
TELEPHONE: (808) 889-5970. (808) 934-7033  
FAX: (808) 934-7231. CELL: (808) 987-4223. EMAIL: duanek@kohalainapartners.com

February 29, 2008

Mr. Christopher J. Yuen, Director  
Planning Department  
County of Hawaii  
100 Pauahi Street, Suite 3  
Hilo, HI 96720

**Subject: Kohala Preserve Māhukona  
Māhukona, Kamano, Kou and Kapa'anui at North Kohala  
TMK Nos. 5-7-02:11; 5-7-03:03 and 10**

Dear Mr. Yuen:

Per your recent meeting with Bill Shontell and me on Thursday, February 14, 2008, you requested that we submit the latest subdivision for the Māhukona project area along with a comparative narrative on the differences between the previously entitled project and our latest, limited development and conservation easement based proposal. You also requested validation that no golf course would be constructed as a component of the new project proposal.

Much of the following information and chronology was provided to the Planning Department as part of the annual progress reports for both properties, Kapa'anui and Māhukona, as well as in other recent transmittals such as the request for time extensions, etc.

Subdivision Submittal

By separate transmittal in conjunction with this letter, Kohala Preserve Conservation Trust LLC (KPCT) has submitted a revised tentative subdivision application under Subdivision No. 88-111 for the development of a 53-lot subdivision at Māhukona. The revised application area covers TMK Nos. 5-7-02:11 and 5-7-03:03 and 10 at Māhukona, Kamano, Kou, and Kapa'anui, North Kohala.

The revised subdivision creates forty-one (41) lots within the Agricultural-1 acre and Agricultural-5 acre zoned areas ranging from 1.4 acres to approximately 6.5 acres in size; one (1) 14.3-acre Resort-Hotel (V-2.0) zoned lot; one (1) 12.5 acre Open zoned lot; five (5) large common area lots, and five (5) roadway lots. The Conservation District area fronting the shoreline remains in its current configuration as a common area lot.

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Mr. Christopher J. Yuen  
February 29, 2008  
Page 2

### Project Comparisons

As we provided in our letter of February 13, 2008 (Annual Progress Report – Ordinance No. 90-007), Subdivision No. 80-111 received tentative subdivision approval in September, 1988 for 168 one-acre sized lots on TMK No. 5-7-02:11. By letter dated August 19, 1991, then new landowner and applicant Chalon International Inc. submitted revised tentative subdivision plat maps to encompass TMK: 5-7-03:03 and 10 in order to provide a coordinated review of the development and associated infrastructure as recommended by the County and the State (Department of Transportation, Highways Division). Now, under the proposed KPCT limited development plan, the total number of proposed lots will be reduced from 168 one-acre sized lots to 53 lots of various sizes ranging from 1.4 to 6.5 acres in size.

Inasmuch as no County or State agency predicated its approval on compliance with Chapter 343 at the time of the initial tentative subdivision approval in 1988, nor during the 1991 revised preliminary plat map review, it would appear that compliance with Chapter 343, HRS, was therefore not applicable.

Further, in Civil No. 93-417, Hawai'i Supreme Court ruling No. 20723 (1999) affirmed the granting of permits and approvals by the Hawai'i County Planning Commission and the Hawai'i County Council. While the Hawai'i Supreme Court also remanded to the lower courts the narrow question of whether the proposed construction of a golf cart underpass constituted the use of State lands and thereby required environmental review under Chapter 343, HRS, it is significant, in our opinion, to note that the court did not hold or cite the connection of the proposed project to the State highway in the same vein.

Ordinance No. 90-007 approved a portion of the area covered by TMK 5-7-02:11 (Kapa'anui) as Agriculture A-1a. Ordinance No. 93-109 approved a portion of the area covered by TMK Nos. 5-7-03:03 & 10 (Māhukona) for Resort-Hotel (V-2.0), Agricultural (A-1a) and Open (O). SMA Use Permit No. 341 similarly approved the overall development plan and Use Permit No. 111 approved the construction of an 18-hole golf course as represented on the proposed development program at the time of approval.

At that time in 1993, a 200-240 unit hotel, a 125-150 1-acre lot subdivision, and an 18-hole golf course, clubhouse, and tennis facility were proposed. Those proposed densities were also less than the permitted densities in the Urban/Resort core and the surrounding A-1a and A-5a zoning designations. Respective permitted zoned densities are 311 resort units and 260 lots/units, for a total of 571 units of entitled density without the golf course. About 110 lots would be displaced if the golf course was constructed and the total density would then drop to 461.

Mr. Christopher J. Yuen  
February 29, 2008  
Page 3

In contrast, the proposed limited development program is represented by the 53 lot subdivision, of which 11 lots are for common area, roadways, or the creation of lots around the Open zoned district.

It is important to note at this juncture that the proposed application of a conservation/agricultural easement over most of the subject properties is designated as a key component to the success of the overall, limited development project. In order for that to happen, the proposed reduction in density throughout the project area is being voluntarily proposed and not as the result of any "quid pro quo" for any type of governmental approvals.

As we have described above, KPCT has the entitlements to develop the property to a significantly higher and more valuable use, but is proposing to voluntarily reduce the entitled density to provide significantly more open space through the optimum siting of lots and building envelopes, reducing overall infrastructure improvements and supplementing that infrastructure with "green" construction design along with other energy efficient technologies, and integrating native plantings. The establishment of long term value-added timber products such as kow, milo, and kamani will provide project landscaping and windbreaks for the planting of faster growing citrus crops such as oranges, tangelos, and mangos which should do well in the climatic conditions found on the property. This agricultural plan is envisioned to be implemented in lieu of a golf course on the subject properties.

Most important is the fact that that application of the proposed conservation/agricultural easement will essentially cap and therefore perpetuate the density of the project area. The easement will be administered by a bona fide 501(C) (3) conservation entity in accordance with applicable IRS rules and regulations. At this time, we are looking closely at local organizations such as TREE to serve as the conservation administering entity.

To assist in implementing this easement, it would be greatly appreciated if you would confirm the density level of entitlements KPCT presently has for the property, and also provide a statement that the voluntarily proposed limited development scenario is also allowable under the present entitlements. As you know, KPCT has applied for various plan approvals and now the proposed limited density subdivision, without any requests for special consideration while doing so. KPCT has also complied with or is in the process of complying with the numerous conditions of entitlement approvals, such as affordable housing, fair share contribution, job training, and park improvements which are reflective of the proposed reduced density project. Such a statement would go a long way towards assuring that the proposed limited development program meets the criteria for application for approval of the proposed conservation/agricultural easement.

Mr. Christopher J. Yuen

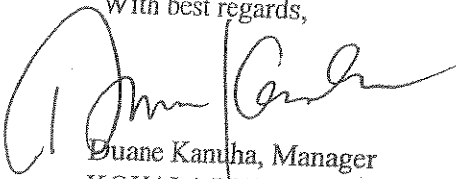
February 29, 2008

Page 4

Should you have any questions about the information provided with this submittal, please do not hesitate to contact either Project Director Bill Shontell at 889-6257 or myself at 934-7033/987-4223 (cell).

As always, your insight and support is greatly appreciated.

With best regards,



Duane Kanuha, Manager

KOHALA PRESERVE CONSERVATION TRUST

cc: Carl Carlson, KPCT Manager  
Bill Shontell, KPCT Project Director  
Randall Sakumoto, M4