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Attorneys for Petitioner/Appellant
KOHALA PRESERVE CONSERVATION TRUST, LLC

HAWAII COUNTY BOARD OF APPEALS
COUNTY OF HAWAII PLANNING DEPARTMENT
STATE OF HAWAII

2008 AUG 1 pm 1:46
PLANNING DEPARTMENT
COUNTY OF HAWAII

In the Matter of)	SUB-88-000111
)	
APPEAL FROM DIRECTOR'S)	PETITION FOR APPEAL OF
JULY 3, 2008, DECISION TO DEFER)	DIRECTOR'S JULY 3, 2008, DECISION
ACTION ON APPLICATION FOR)	TO DEFER ACTION ON APPLICATION
SUBDIVISION AND APPROVAL OF)	FOR SUBDIVISION AND APPROVAL
PRELIMINARY PLAT MAP (SUB-88-)	OF PRELIMINARY PLAT MAP;
000111))	EXHIBITS "A - E"; CERTIFICATE OF
)	SERVICE
SUBDIVIDER: KOHALA PRESERVE)	
CONSERATION TRUST, LLC)	
)	

**PETITION FOR APPEAL OF DIRECTOR'S
JULY 3, 2008, DECISION TO DEFER ACTION ON APPLICATION
FOR SUBDIVISION AND APPROVAL OF PRELIMINARY PLAT MAP**

Petitioner/Appellant Kohala Preserve Conservation Trust, LLC (hereinafter "Appellant"),
by and through its undersigned attorneys, hereby appeals the Planning Director's July 3, 2008,
decision to defer action on Appellant's subdivision application and preliminary plat map. This

SCANNED
AUG 06 2008
By: 044076

appeal is based upon Hawaii County Code (the "Code") Section 23-62, and Parts 2 and 8 of the Hawaii County Board of Appeals Rules of Practice and Procedure.

1. **APPELLANT AND APPELLANT'S REPRESENTATIVE**

Appellant's address and phone number is P.O. Box 335, Hawi, Hawaii 96719, (808) 889-5970. Appellant is represented in this appeal by the undersigned attorneys, whose address and phone number appears on the first page of this Petition.

2. **DESCRIPTION OF PROPERTY; TMK; APPELLANT'S INTEREST**

This appeal concerns the proposed consolidation of Parcels 9-C, 9-D, 11 and R-1, being portions of the following: Royal Patent 2236, Land Commission Award 8522-B, Apana 2 to Kale Davis; Royal Patent 6818, Land Commission Award 8098 to Hoewaa; Land Commission Award 7715, Apana 7 to Lota Kamehameha (Boundary Certificate No. 145); Mahele to Ruth Keelikoloni (Boundary Certificate No. 146); Grant 3405 to Trustees of the Estate of James Woods; Grant 1992 to Henry Christiansen; and Grant 654 to Kaheana; and all of the following: Royal Patent 7517, Land Commission Award 8729 to Kaheana; Royal Patent 667, Land Commission Award 8723 to Kahaiwai; Grant 666 to Keau; and Grant 10129, Parcel C to Hawaii Railway Com., Ltd.; and resubdivision inot Lots 1 to 48, inclusive, roadway lots Rd-1 to Rd-5, inclusive and designation of easements 1 to 10, inclusive; at Kapaahunui, Kou, Kamano, Mahukona 1st & 2nd, North Kohala, Hawaii, TMK Nos. (3) 5-7-002:011, 5-7-003:003 & 010 (the "Property").

Appellant is the fee owner of the Property and the applicant under a subdivision application concerning the Property.

3. **PLAIN STATEMENT OF THE NATURE OF THE APPEAL AND THE RELIEF REQUESTED**

a. **Background**

On March 4, 2008, Appellant filed a Subdivision and/or Consolidation Application and a preliminary plat map depicting the proposed consolidation of the Property and resubdivision into forty-eight (48) residential lots and five (5) roadway lots. A true copy of Appellant's transmittal letter to the Planning Director (the "Director"), dated March 8, 2008 (but date stamped March 4, 2008) including a copy of said application (the "Application") is attached hereto as Exhibit "A".

On March 31, 2008, Appellant filed a revised preliminary plat map addressing comments communicated by the Director to Appellant in a telephone conference on March 10, 2008. A true copy of Appellant's transmittal letter to the Director dated March 28, 2008, and date stamped March 31, 2008, of such revised preliminary plat map is attached hereto as Exhibit "B".

On April 15, 2008, the Director notified Appellant by letter that the preliminary plat map was incomplete for various reasons. A true copy of the Director's April 15, 2008, letter is attached hereto as Exhibit "C".

On May 7, 2008, Appellant filed a further revised preliminary plat map addressing the concerns raised by the Director in his April 15, 2008, letter. A true copy of Appellant's transmittal letter to the Director dated and date stamped May 7, 2008, and such further revised preliminary plat map (hereinafter, the "Preliminary Plat Map") are attached hereto as Exhibit "D".

Section 23-62(a) of the Code requires action upon a preliminary plat within forty-five days after submission:

"Within forty-five days after submission of the preliminary plat, the director shall review the plan and may give tentative approval of the preliminary plat as

submitted or as modified or may disapprove the preliminary plat, stating the reasons for disapproval in writing or shall defer action pending further review.”

If no action is taken with forty-five days after submission, the preliminary plat is deemed to be approved pursuant to Sec. 23-62(b) of the Code:

“If no action (approval, disapproval, modification, or deferral) is taken by the director within forty-five days after submission of the preliminary plat, or such longer period as may have been agreed upon in writing, the preliminary plat shall be deemed approved.”

On July 3, 2008, the Director notified Appellant by letter that action on the Application and Preliminary Plat Map was being deferred (the “Deferral Decision”). A true copy of the Director’s July 3, 2008, letter is attached hereto as Exhibit “E”.

b. Nature of Appeal

The forty-five day period for action upon the Preliminary Plat Map expired on June 21, 2008. No action was taken by the Director in that timeframe, and Appellant has not agreed to any extension of time. Accordingly, the Preliminary Plat Map is deemed approved pursuant to Sec. 23-62(b) of the Code. The Director’s subsequent Deferral Decision is invalid as it did not occur within the forty-five day period required by Sec. 23-62(a) of the Code, and the Director has no authority under the Code to invalidate, after the fact, a preliminary plat which has already been approved. Accordingly, this appeal is brought to invalidate the Deferral Decision which was ultra vires, and to confirm that the Preliminary Plat Map has been automatically approved pursuant to Sec. 23-62(b) of the Code due to the Director’s failure to act upon the Application and Preliminary Plat Map within the required forty-five (45) day period.

c. Relief Requested

Appellant asks that the Board of Appeals (i) confirm that the Preliminary Plat Map was automatically approved pursuant to Sec. 23-62(b) of the Code as a result of the Director’s failure

to act upon the Application and Preliminary Plat Map within the timeframe required by Sec. 23-62(a) of the Code; and (ii) invalidate the Deferral Decision.

4. **STATEMENT EXPLAINING HOW THE DECISION APPEALED FROM VIOLATES THE LAW; OR IS CLEARLY ERRONEOUS; OR IS ARBITRARY AND CAPRICIOUS, OR CHARACTERIZED BY AN ABUSE OF DISCRETION OR CLEARLY UNWARRANTED EXERCISE OF DISCRETION**

See Sections 3.a and 3.b above.

5. **CLEAR AND CONCISE STATEMENT OF OTHER RELEVANT FACTS**

See Section 3.a above.

DATED: Honolulu, Hawaii, August 1, 2008.



RANDALL F. SAKUMOTO
JOEL D. KAM
JAN MORIMOTO SAM

Attorneys for Petitioner/Appellant
KOHALA PRESERVE CONSERVATION
TRUST, LLC

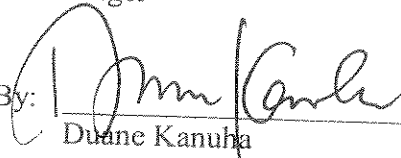
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DECLARATION OF APPELLANT

The undersigned hereby declares under penalty of perjury that the statements of fact contained in the foregoing Petition are true and correct to the best knowledge of the undersigned, and that each of the documents attached as an exhibit to the Petition is a true and correct copy of the document it purports to be.

KOHALA PRESERVE CONSERVATION TRUST,
LLC, a Delaware limited liability company

By Kohala 'Āina Partners, LLC,
a Hawaii limited liability company
Its Manager

By: 
Duane Kanuha
Its Manager

“Appellant”

COUNTY OF HAWAII
BOARD OF APPEALS

GENERAL PETITION FOR APPEAL OF DECISIONS BY PLANNING DIRECTOR
(Type or legibly print the requested information)

APPELLANT: Kohala Preserve Conservation Trust

APPELLANT'S SIGNATURE: N/A DATE: N/A

ADDRESS: P. O. Box 335, Hawi, Hawaii 96719

TELEPHONE: (Bus.) (808) 889-5970 (Home) N/A

APPELLANT'S INTEREST IN THE PROPERTY: See Section 2 of Petition filed on August 1, 2008 (copy attached) (hereinafter, the "Petition")

APPELLANT'S NATURE OF APPEAL AND REQUEST: See Section 3 of the Petition

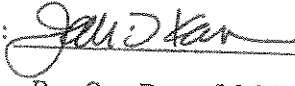
LAND OWNER: Kohala Preserve Conservation Trust, LLC
(3) 5-7-002-011;

TAX MAP KEY: (land in question) (3) 5-7-003-003 & 010 AREA OF PROPERTY: 365.5
Conservation, Agriculture

STATE LAND USE DESIGNATION: and Urban COUNTY ZONING: A-1a, A-5a, V2.0, open

STREET ADDRESS OF PROPERTY: None

APPELLANT'S REPRESENTATIVE: Joel D. Kam, Esq.

REPRESENTATIVE'S SIGNATURE:  DATE: 8/7/08

REPRESENTATIVE'S ADDRESS: P. O. Box 2800, Honolulu, Hawaii 96803

TITLE: Attorney TELEPHONE: (Bus.) (808) 529-7300

THIS PETITION MUST BE ACCOMPANIED BY A FILING FEE OF TWO HUNDRED FIFTY DOLLARS (\$250) PAYABLE TO THE COUNTY DIRECTOR OF FINANCE AND:

1. The Original and ten (10) copies of this completed petition with the following:
 - a. A description of the property involved in the appeal in sufficient detail for the public to precisely locate the property.
 - b. A statement explaining the nature of the appeal and the relief requested.
 - c. A statement explaining:
 - (i) How the decision appealed from violates the law; or
 - (ii) How the decision appealed from is clearly erroneous; or
 - (iii) How the decision appealed from was arbitrary or capricious, or characterized by an abuse of discretion or clearly unwarranted exercise of discretion.
 - d. A clear and concise statement of any other relevant facts.
2. Proof of Service by the Appellant on the Planning Director for an appeal from the Planning Director's decision relating to the Zoning Code.
3. A list of the names, address and tax map keys of all owners of property within boundaries established by Section 8-11(d) of the Board of Appeals Rules of Practice and Procedure.