

KOHALA PRESERVE CONSERVATION TRUST LLC

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February 13, 2008

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

SUBJECT: ANNUAL PROGRESS REPORT – ORDINANCE NO. 90-007
(AMENDING ORDINANCE NO. 86-82)
KAPA'ANUI AND KOU, NORTH KOHALA, HAWAI'I
TMK: 5-7-02:Portion of 11

Dear Mr. Yuen:

In compliance with Condition "R" of Ordinance No 90-007, Kohala Preserve Conservation Trust LLC, successor to Surety Kohala Corporation, the successor to applicant, Chalon International of Hawaii, Inc. hereby submits the annual progress report for 2007. Condition "R" states that:

"(R) an annual progress report shall be submitted to the Planning Director prior to the anniversary date of the effective date of this amendment. The report shall address the status of the development and the compliance with the conditions of approval. This condition shall remain in effect until all of the conditions of approval have been complied with and the Planning Director acknowledges that further reports are not required."

The anniversary date of Ordinance No. 90-007 is February 13, 1990.

This status report was initially drafted in November, 2007 following meetings with you during which you stated that annual progress reports per condition R had not been submitted since 1996. Significant changes have occurred with respect to the entitlements and concurrent development scenarios for the subject property in conjunction with the adjacent parcels at Māhukona that make it impractical and unrealistic to provide status reports on each property separately.

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Overlapping Implications of Ordinances No. 90-007 (amended Ord No. 86-82) and Ordinance No. 93-109.

Although zoned separately and in different years, the properties have been proposed to be developed and reviewed by the reviewing agencies as an integrated project.

The property entitlements Kapa'anui were first secured by Ordinance No. 86-82, effective August 19, 1986 and SMA Use Permit No. 230 by then applicant, Ahualoa Development, Inc. The project was to be developed as a one-acre lot subdivision and was conditioned appropriately.

Ahualoa Development, Inc. applied for and received tentative subdivision approval for a subdivision of 168 lots at Kapa'anui in September, 1988 (Subdivision No. 88-111) covering TMK: 5-7-02:11.

Chalon International of Hawaii, Inc. purchased the Kapa'anui property in 1989 for the purposes of consolidating development of the Kapa'anui property with its land holdings at adjacent Māhukona.

Shortly thereafter, Chalon applied for an amendment to Condition (D) of Ordinance No. 86-82 to allow additional time to file revised subdivision plans. Among other modifications to the conditions of Ordinance No. 86-82 were specific timeframes for construction of road, drainage, and other infrastructure improvements and the addition of a new condition (R), requiring the submittal of annual progress reports. The new ordinance, No. 90-007, amended Ordinance 86-82.

By letter dated August 19, 1991, Chalon submitted revised tentative subdivision plat maps per conditions (B), (C) and (F) of Ordinance No. 90-007. The revised maps included TMKs: 5-7-03:03 and 10, the adjacent Māhukona properties, in order to provide a single connector road.

Chalon received a letter dated August 22, 1991 from the Planning Department acknowledging receipt of the revised plans. The plans were then circulated to the various cooperating agencies for review and comment.

Responses from the County Department of Public Works and the State Department of Transportation, Highways Division were that the additional Māhukona TMK'S were not part of the initial subdivision application and that a change of zone was recommended for the additional Māhukona TMKS before further reviews were forthcoming. Additionally, only one common access point was preferred and that was a connection to the State Akoni Pule Highway.

In conjunction with coordinating an agreeable access point along the Akoni Pule Highway, Chalon subsequently applied for and received SMA Use Permit No. 341 and Use Permit No. 111 on June 16, 1993, followed by a State Land Use Boundary Amendment (Ordinance No. 93-113) and various change of zones (Ordinance No. 93-109) approved on November 8, 1993 but with an effective date of February 27, 1996.

Annual progress reports for these entitlements at Māhukona have been provided as required.

Annual progress reports for Kapa'anui have not been provided since 1996, mostly due to the overlap in reporting requirements for what is clearly considered to be a unified project.

Applicability of entitlements and entitlement conditions inconsistent between properties.

The Māhukona SMA Use Permit No. 341 and Use Permit No. 111 are applicable to the abutting the Kapa'anui property, identified by TMK: 5-2-7:11.

Because of overlapping permits, SMA Use Permit No. 230 was deemed to have been superseded by SMA Use Permit No. 341, and the Kapa'anui property is now encumbered by the permit and conditions of SMA Use Permit No. 341.

While Ordinance Nos. 90-007 and 93-109 do not supersede each other, various conditions of approval are inconsistent. For example, there are specific time conditions within which subdivision plans are required under the Kapa'anui ordinance while the Māhukona ordinance does not specify any such time constraints for subdivision plan submittal.

Litigation tolled condition compliance.

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Because the project has been designed and programmed as one integral development, litigation on the Māhukona entitlements precluded implementation of development financing and infrastructure construction on the Kapaanui parcel.

Status of the Applicant

The property was acquired by Chalon International of Hawaii, Inc., in September, 1989.

In 1999, Chalon International of Hawaii, Inc., changed the company name to Surety Kohala Corporation, Inc.

The subject properties, along with the adjacent Māhukona parcels, were conveyed to Kohala Preserve Conservation Trust LLC under a joint venture agreement between Surety Kohala Corporation and Kohala 'Āina Partners LLC on December 31, 2005. The objective of the joint venture is to market and implement a very limited development project for both the Kapa'anui properties and the adjacent Māhukona properties utilizing conservation easements and other protective measures to maintain open space and enhance the natural attributes of the landscape.

Status of the Development 1996 to 2007

As indicated above, the objectives of acquiring the Kapa'anui property in 1989 was to master plan and develop a project consistent with the General Plan for the Māhukona area. That objective has been consistent throughout the almost 20 years that the company has held the properties. The recent joint venture is a unique departure from the traditional resort/estate/golf course development project. The objective is to market and implement a very limited development project for both the Kapa'anui properties and the adjacent Māhukona properties utilizing conservation easements and other protective measures to maintain open space and enhance the natural attributes of the landscape, and therefore create a uniquely, "less is more" type of product. This is as compared to fully developing the property which has permissible zoning entitlements for up to 311 units within the Urban/Resort zoned area and up to 250 lots on the remaining property.

As reported in the Māhukona annual report for 2006, the company has secured and utilized pre-development financing to move forward with infrastructure design, construction engineering, and the design and construction of marketing amenities. A major component of the overall concept continues to be a conservation/agricultural easement overlaying the properties administered by a bona fide 501(c) (3) conservation organization. The use of such an easement insures that no further development can occur

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over the property. We have worked to determine appropriate density layouts and are currently assessing a proposed baseline study and stewardship program component. We continue to assess the common area components of the project relative to the overall operational costs, and more recently have initiated discussions with several local conservation or reforestation 501(c)(3) organizations as possible managers of the conservation/agricultural easement areas, while we continue to work closely with Na Kalai Wa'a, who have provided cultural stewardship of certain sites and interpretive guidance for the property for over 20 years. Currently, the program consists of a members club facility and small members hotel of between 6 to 12 units within the existing Urban and Resort zoned area, surrounded by approximately 48 lots ranging in size from 1.5 acres to over 5 acres. Specific building sites will be designated and the remainder of the individual parcels will also be dedicated to the conservation/agricultural easement.

In keeping with the conservation/agricultural easement theme, the project will not have a golf course component. Instead, an agricultural master plan for the area has been commissioned and recently completed. The plan shows great promise for native dry land timber such as milo, kamani and kou as a long term agricultural commodity which will encompass over 82% of the property. These long term planting will also serve as windbreaks to support faster growing citrus crops such as tropical tree crop mango and semi-dwarf citrus crops of limes, oranges and tangelos.

There has been significant progress in coordinating and constructing off-site infrastructure. Irrigation transmission systems are near completion, although extensive damage to the Kohala ditch irrigation system may require the use of other water sources. Two (2) potable water wells have been finished and are ready to be outfitted. Testing has shown the water quality and quantity to be exceptional. HELCO has initiated design of a reduced scale power distribution system, although existing water and electrical transmission lines will be adequate for the initial phases of the project. The company's engineers have been working with State engineers for several years in developing construction plans and specifications for the entry connection, and those plans are almost 90% complete.

Compliance with Conditions

With regard to compliance with conditions specific to Kapa'anui, the major condition still applicable to Ordinance No. 90-007 is condition "C" which reads:

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“(C) revised subdivision plans shall be submitted to the Planning Department [within one year from the effective date of the change of zone] by August 19, 1991. Final subdivision approval shall be secured within one year from the date of tentative subdivision approval.”

Tentative subdivision approval (Sub No. 88-11) was granted for the proposed project to the former applicant.

The new Applicant, Chalon International of Hawaii, Inc., requested and received approval of an amended time frame in which to submit revised subdivision plans (Ord No. 90-007). The Applicant submitted revised subdivision plans to the Planning Department in compliance with the stipulated time frame. The Planning Department acknowledged receipt of the plans shortly thereafter.

Section 23-62 (B), Tentative Approval of Preliminary Plat, at that time stated, and still presently states:

“(B) 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 to in writing, the preliminary plat shall be deemed approved, and the director shall endorse the approval of the preliminary plat upon the face thereof.”

Given that the revised preliminary plat incorporated additional TMKS, the Māhukona properties, which generated legitimate concerns with respect to consolidated access and entitlement issues, and further that various entitlement applications were almost concurrently filed, it is reasonable to assume that the Applicant clearly intended that action on the proposed plat be deferred to effectuate resolution of these pertinent issues. Additionally, approval of a preliminary (tentative) plat map would then trigger subsequent conditions of construction plans and final plat map submittals which would be inapplicable to the jointly proposed development plan.

In a letter to then Councilman Keola Childs, dated August 30, 1993, the Planning Department also confirmed that condition “C” of Ordinance No. 90-007 was still in effect and stated that “The one year requirement for final subdivision approval has not been triggered since tentative approval has not been granted.”

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In summary, condition "C" of Ordinance No. 90-007 is still applicable due to the acknowledged deferral of action on the revised preliminary plat submitted in 1991, and tentative subdivision approval Sub No. 88-11 is still valid.

As such, the Applicant intends to submit a revised tentative subdivision plat for subdivision application 88-11 which will reflect the subdivision of approximately 49 lots as compared to 168 lots in the pending tentative subdivision approval.

Please feel free to call on me at 934-7033 if there are any further questions regarding the above.

Sincerely,

A handwritten signature in black ink, appearing to read "Duane Kaniha". The signature is written in a cursive style with a large initial "D".

Duane Kaniha, Manager
Kohala Preserve Conservation Trust LLC

cc Kohala 'Āina Partners LLC
Surety Kohala Corporation