

Kona Three LLC
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LAND USE COMMISSION
STATE OF HAWAII

2016 NOV -7 A 9:46

November 3, 2016

Mr. Duane Kanuha, Director
County of Hawai'i Planning Department
101 Pauahi Street, Suite 3
Hilo, Hawai'i 96720

State Land Use Boundary Amendment (LUC 534)

LUC Docket No. A83-549

Petitioner: Kona Three LLC (formerly Kona Vistas LLC and Gamrex, Inc.)

Subject: Planning Department Letter dated 10-21-16 in response to 2015-2016 LUC Annual Progress Report

TMK: (3) 7-6-21:004, 009 through 013, 015 and 017 (Now TMK's (3) 7-6-21: 016; 017; 018 & 019)

Dear Director Kanuha,

We received your letter dated 10-21-16 referencing required drainage improvements for parcels totaling about 12 acres at Tax Map Keys 3/7-6-24:25, 112 & 113 (the Properties) that have been designated for affordable housing. We acknowledge your position that drainage improvements were to be completed prior to conveyance of the 12 acres to the County of Hawai'i. You reference Condition A of the State Land Use Commission Decision and Order for Increment I of the Kona Vistas project, as well as Conditions K and Q of the County of Hawai'i Ordinance No. 02-131. The Conditions are defined as follows:

- 1) State LUC D&O Condition A: *Petitioner shall provide housing opportunities for low and moderate income Hawaii residents prior to assigning or transferring (except by way of mortgage or assignment as security) its interest in the subject property, by offering for sale on a preferential basis, on its own or in cooperation with either or both the Hawaii Housing Authority or the County of Hawaii, ten percent (10%) of the lots or house and lots to be developed on the subject property to residents of the State of Hawaii of low and moderate income as determined by the Hawaii Housing Authority or County of Hawaii from time to time. The preferential lots or house and lots shall be offered for sale at prices not exceeding prices that enable such purchasers to qualify for and obtain state-assisted financing (i.e., Act 105 or Hula Mae) or federally-insured or assisted financing (i.e., FHA Section 245 program) intended to encourage home ownership by low and moderate income families.*
- 2) County of Hawai'i Ordinance No. 02-131 Condition K: *housing opportunities for Hawaii residents shall be provided in accordance with the condition imposed by the State Land Use*

Commission. The number of units and manner in which they are to be provided shall meet with the approval of the Hawaii County Housing Agency.

- 3) *County of Hawai'i Ordinance No. 02-131 Condition Q: a drainage master plan shall be submitted to the Department of Public Works for review and approval prior to issuance of any subdivision or plan approvals. The plan shall include, as a minimum, hydrological and hydraulic calculations for all components of the drainage system, a construction timetable for all elements of the system, and an analysis of downstream impacts. Further, mitigating measures as approved by the Department of Public Works shall be taken to eliminate any downstream impacts.*

We would like to clarify two points at this time.

One: Condition A of the Land Use Commission's Decision and Order requires a 10% affordable housing requirement and places conditions of meeting this requirement under auspices of the County of Hawaii. Condition K of County Zoning Ordinance No. 02-131 enshrines LUC Condition A in the zoning ordinance. These conditions have been memorialized by agreement between the County Housing Agency (now the Office of Housing and Community Development) in the Affordable Housing Agreement dated January 1, 1999, which has been amended 7 times. This Agreement requires drainage improvements to be completed from the mauka boundary to the makai boundary prior to conveyance of the properties to the County, no later than December 31, 2006. This Agreement is in default as to time requirements. Kona Vistas LLC, the original developer, purchased the Property in 1989 at the behest of the County to fulfill the affordable housing requirements, and worked hard for years to get the approvals necessary.

The drainage improvements that were to be built on the Property are described in plans called "North Kona Flood Control Channel" by The Keith Companies dated 6-7-1993. The plans were approved in a CLOMR dated 3-24-1995, Case No. 95-09-148R. As some of the improvements were to be built on County property, a Final Environmental Impact Statement dated 4-1-1996 was done as well. Then it was discovered that the drainage design to link into the County ditch at Kupuna Street would need to be routed through some land owned by two separate homeowners on adjacent lots, and it took another six years to negotiate a deal between the County, the two property owners, and Kona Vistas LLC to allow the drainage improvements to go through this small portion of property, finalized 11-8-2002.

Additionally, since the Property is in SMA zoning, SMA Use Permit No. 430 had to be obtained, and was issued in April 2003.

Since the Property was acquired 27 years ago to provide affordable housing, much has changed, including the death of the founder of Kona Vistas LLC and its predecessor entities; the development of lands surrounding Kona Vistas subdivision; new roads in the area; and changes in Federal, State and County rules and regulations. Changes in Federal rules and regulations include the discouragement of

concrete lined channels for flood control projects (which is the currently approved design for the subject Property improvements) due to their use being associated with 1) the acceleration of runoff which causes problems downstream; 2) increased transport of sediment and boulders due to the accelerated flow; 3) reduced recharge of groundwater due to concrete's impervious surface; 4) loss of natural habitat due to digging and covering of ditches with concrete; and 4) increased water temperatures. According to our hydrologist, Ty Dempsey, P.E. of Dempsey Pacific, current design standards and best management practices call for unlined drainage channels wherever possible.

The change that most effects the planned drainage improvements is the recently approved and soon to be adopted (the County is already using the revised figures) changes to the Holualoa Ditch drainageway, based on a decade long study by FEMA and the County DPW. The changes in the flood zone for Holualoa Ditch increases the amount of water flowing down the ditch (the "Q") in the 1% event (the so-called 100-year flood event).

Ty Dempsey has performed the hydrological analysis (see attached) and has confirmed that the increase in the Q will result in the Holualoa Ditch drainage channel overtopping both the Queen Kaahumanu Highway (owned and managed by the state of Hawaii) as well as the Kuakini Highway (owned and managed by the County of Hawaii) if the plans approved by the CLOMR in 1995 are completed as designed, as those plans envisioned the combining of the Holualoa Ditch and the Horseshoe Bend Ditch mauka of Queen Kaahumanu Highway by constructing a diversion ditch that would converge the Horseshoe Bend Ditch and the Holualoa Ditch mauka of Queen Kaahumanu Highway. Creating an overtopping of these two major arterials in the 1% event is not acceptable and brings the approval of the CLOMR plans into question. It is highly unlikely these plans will proceed at this time, based on these changes.

Therefore, the plans for drainage improvements on the Property, where the Horseshoe Bend Ditch and the Holualoa Ditch currently converge, will need to be altered. Until such plans are altered and approved by FEMA and the County DPW, and the currently expired SMA is amended and extended, the drainage improvements cannot be built.

Two: We (KV3, LLC and Kona Three LLC) do not own the Property, have never owned the property, and are in no position to build improvements in any case. Our purchase of fee simple lands from Kona Vistas, LLC did not include the purchase of the Kona Vistas LLC; and KV3, LLC and Kona Three LLC are not directly responsible for agreements entered into by Kona Vistas, LLC. We are however indirectly involved as the zoning ordinance for 3/-6-21:016 & 017 are subject to conditions involving agreements entered into by Kona Vistas, LLC. When we purchased the last of the Kona Vistas LLC land holdings, the County OHCD specifically instructed Kona Vistas LLC to deed the Property directly to the County. Based on these instructions, a recordable Deed from Kona Vistas LLC to the County was drafted and submitted to escrow, to be recorded once the County had completed an Environmental Assessment required for the conveyance. For unknown reasons, escrow recorded this Deed before the EA was complete, and we

were notified that the County Corporation Counsel is taking action to reverse this conveyance, which will transfer ownership of the Property back to Kona Vistas LLC.

OHCD has apparently identified some third party 501 C-3 affordable housing developers who are willing to take the Property and develop it without the drainage improvements being built. These developers do, however, want the SMA Permit updated and in place.

On September 22, 2016 a meeting was held at the County of Hawaii Planning Department between the three members of KV3, LLC and Kona Three LLC (myself included) and Daryn Arai of the County of Hawaii Planning Department; Alan Rudo of the Office of Housing and Community Development; and Ronald Kim, Esq. of the County Office of the Corporation Counsel concerning these matters. At this meeting, Kona Three LLC agreed to work with Corporation Counsel to reverse the conveyance of the Property; to work with Planning Department on updating and extending the SMA for the Property; and to work with OHCD on helping to arrange a conveyance to a third party developer of the Property. We are now working on these goals.

Once we have made progress on these goals, and have County approvals for the steps required, we will be able to answer your questions concerning construction of improvements and the timeline for same in a more factual manner.

Thank you for your attention to these matters.

Sincerely,

Richard A. Wheelock, Member of KV3 LLC

RAW: raw

CC: Ronald Kim, Esq., Corp. Counsel

Alan Rudo, OHCD

State Land Use Commission

Warren Lee, P.E. @ County of Hawaii Department of Public Works

Ty Dempsey, P.E.

Bob Williams and Roland Higashi, KV3 LLC and Kona Three LLC

Dempsey Pacific Inc.

Civil Engineering Design & Consulting Services

November 3, 2016

Kona Three LLC
1188 Bishop Street, Suite 711
Honolulu, HI 96813

Subject: State Land Use Boundary Amendment (LUC 534) – LUC Docket No. A83-549
County of Hawaii Ordinance No. 02-131
Kona Vista Subdivision CLOMR No. 95-09-148R
TMK: (3) 7-6-021:016, 017, 018 & 019

Dear Kona Three LLC:

We understand that a Conditional Letter of Map Revision (CLOMR) was obtained in 1995 for the large parcels adjacent to the Kona Vista Subdivision for residential development, TMK Parcels (3) 7-6-021:016 & 017 (along with County drainageway property TMK: (3) 7-6-021:018 & 019). The CLOMR describes how the existing natural Horseshoe Bend and Holualoa Drainageway would be channelized into a concrete lined trapezoidal channel and then combined into one (1) large drainageway following the alignment of the County properties TMK: (3) 7-6-021:018 & 019. From the point where the Horseshoe Bend Drainageway would be re-routed into the Holualoa Drainageway, the combined flood channel would then follow closely to the existing Holualoa Drainageway location and the Horseshoe Bend Drainageway would be removed.

The Holualoa Drainageway is part of the County's Preliminary DFIRM and North Kona LOMR for re-study of the regional floodplains within the area. Based on review of the Preliminary DFIRM and the old 1995, the drainageways have the follow peak flood discharge flowrates at the Queen Kaahumanu Highway crossing:

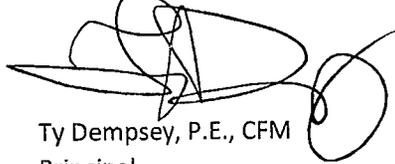
Drainageway	100-year Peak Discharge	500-year Peak Discharge
Horseshoe Bend	1,260 cfs	1,870 cfs
Holualoa	~1,550 cfs	~2,400 cfs

The 500-year peak discharge for Holualoa Drainageway of 2,400 cfs is shown as overtopping the Queen Kaahumanu Highway and not being able to flow within the two 9' diameter structural plate pipe culverts. The existing conditions 100-year peak discharge is contained within the culverts and does not overtop the highway. If the 1995 CLOMR project were to proceed, the combined peak discharge flowrates of Horseshoe Bend and Holualoa Drainageways would have a 100-year peak discharge rate of approximately 2,810 cfs. The combined drainageways would have a 100-year flow rate approximately 17% greater than the existing 500-year flow rate for only Holualoa Drainageway at the Queen Kaahumanu culvert crossing. Due to this increase in peak flood discharge flowrates by combining the two drainageways, we would expect the 100-year event to overtop Queen Kaahumanu Highway.

The 100-year flood event is defined as the regulatory floodplain which the State and County uses for floodplain regulations and development standards to ensure health and safety for the public. Since the 1995 CLOMR would combine two drainageways into a single highway crossing, the 100-year floodplain would be raised and widened at Queen Kaahumanu Highway and actually have floodwaters overtopping the roadway surface with 1' or more of moving flood water. We believe due to this condition of causing a highway overtopping compared to existing conditions over being contained within the culverts, that the State and County may prefer to not proceed with the 1995 CLOMR.

A modified drainage masterplan and/or CLOMR could be considered for the area to maintain both drainageways as separate and existing drainageways to avoid creating an overtopping condition at the highways for the 100-year flood event.

Sincerely,

A handwritten signature in black ink, appearing to read 'Ty Dempsey', with a large circular flourish at the end.

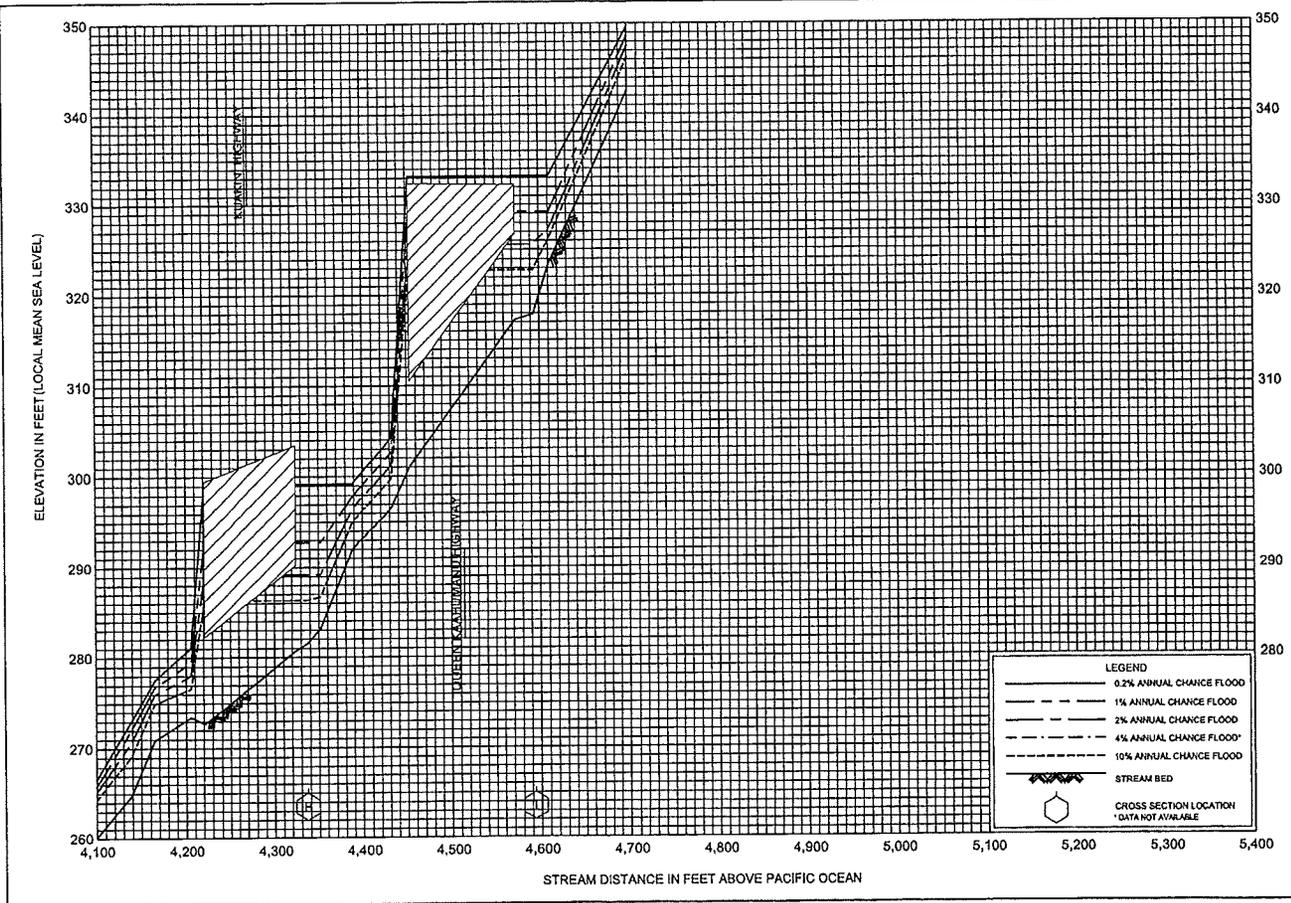
Ty Dempsey, P.E., CFM
Principal

FLOODING SOURCE		FLOODWAY			BASE FLOOD WATER-SURFACE ELEVATION (FEET LOCAL MEAN SEA LEVEL)			
CROSS SECTION	DISTANCE ¹	WIDTH (FEET)	SECTION AREA (SQ. FEET)	MEAN VELOCITY (FEET/ SEC)	REGULATORY	WITHOUT FLOODWAY	WITH FLOODWAY	INCREASE
Holualoa Drainageway								
A	487	305	602	4.2	22.3	22.3	22.3	0.0
B	1,200	35	184	13.0	38.0	38.0	38.0	0.0
C	1,700	38	179	13.4	67.0	67.0	67.0	0.0
D	2,400	33	183	13.2	132.6	132.6	132.6	0.0
E	2,853	32	248	9.7	165.9	165.9	166.0	0.1
F	3,313	183	250	6.2	196.9	196.9	196.9	0.0
G	3,899	159	242	6.4	245.2	245.2	245.2	0.0
H	4,337	50	375	4.1	292.7	292.7	292.7	0.0
I	4,593	66	519	3.0	329.2	329.2	329.2	0.0
J	5,201	91	194	8.0	392.1	392.1	392.1	0.0
K	5,794	157	268	5.8	434.1	434.1	434.1	0.0
L	6,314	100	216	7.1	469.8	469.8	469.8	0.0
M	6,800	94	206	7.5	542.1	542.1	542.1	0.0
N	7,197	50	167	9.2	626.1	626.1	626.2	0.1
O	7,700	51	156	9.9	716.9	716.9	716.9	0.0
P	8,521	70	199	7.8	838.6	838.6	838.7	0.1
Q	9,200	38	142	10.8	951.4	951.4	951.5	0.1
R	9,896	34	131	10.7	1,092.5	1,092.5	1,092.6	0.1
S	10,500	45	142	9.9	1,162.7	1,162.7	1,162.8	0.1
T	10,900	21	61	9.8	1,228.2	1,228.2	1,228.2	0.0
U	11,604	22	64	9.3	1,348.2	1,348.2	1,348.2	0.0
V	11,730	16	76	7.8	1,356.7	1,356.7	1,356.7	0.0

¹Feet above the Pacific Ocean

TABLE 8	FEDERAL EMERGENCY MANAGEMENT AGENCY	FLOODWAY DATA
	HAWAII COUNTY, HI	HOLUALOA DRAINAGEWAY

PRELIMINARY FIS



FLOOD PROFILES
HOLUALOA DRAINAGEWAY

FEDERAL EMERGENCY MANAGEMENT AGENCY
HAWAII COUNTY, HI