

**ANNUAL REPORT-2017 (Dated 9-6-2018)**

**KONA VISTAS, LLC – DOCKET NO. A83-549**

On December 13, 1983, Increment I consisting of approximately 124 acres of the subject properties located in Kailua-Kona on the island of Hawai'i was reclassified into the Urban District subject to conditions imposed by the State Land Use Commission ("LUC"). The properties are located generally on the north and south side of Lako Street, on the mauka side of Kuakini Highway. On May 10, 1993, the second increment consisting of approximately 49 acres, was also reclassified into the Urban District, with additional conditions imposed by the LUC.

In conjunction with the approval of Increment I, Condition C required the submittal of annual progress reports to the LUC, Department of Planning and Economic Development (now Office of State Planning and hereinafter referred to as "OSP"), and the County of Hawai'i Planning Department ("CPD"). A similar annual reporting condition (Condition 3) was also imposed on the approval of the second increment.

This report is being submitted in compliance with these conditions. The last annual report was filed with the LUC; OSP; and CPD dated 8-31--16, and this Report was due by 12-13-2017. I apologize for the tardiness of this Report. The next annual report will be due prior to the anniversary date of the original approval, or December 13, 2018.

I. Status of the Project to Date

A. Project Location

The subject site, originally consisting of approximately 171+/- acres, is located in Kailua-Kona on the Island of Hawai'i. More specifically, the subject area is located mauka or east of the Kuakini Highway and, generally, bordering the north and south sides of Lako Street.

B. Project History and Proposed Development

After obtaining Urban Designation for Increment I, the original developer (Gamrex) obtained zoning for the entire 171+ acres via Rezoning No. 470, originally entitled as Change of Zone Ordinance No. 84-23 effective 5-15-84. This Ordinance rezoned 103 acres to RS-15 zoning, which allows single-family dwellings on lots of no less than 15,000 square feet. It also rezoned about 70 acres to RM-5, which allows multi-family dwellings up to a maximum density of one unit per 5,000 square feet of land.

After rezoning, Gamrex, its engineers, land planners; architects, landscape architects; hydrologists and other professional service providers worked with various agencies (County of Hawai'i Planning Department ("CPD"); Department of Public Works ("DPW"); Department of Water Supply ("DWS"), Office of Housing and Community Development ("OHCD"); the State Department of Transportation-Highways Division ("S-DOT-

Highways”), State Department of Land & Natural Resources-Historic Preservation Division (“SHPD”), US Army Corps of Engineers (“ACOE”), US Department of Fish & Wildlife (“USF&W”), Federal Emergency Management Agency (“FEMA”) and other agencies to entitle, plan, design, and build single-family homes on the Increment I site.

Gamrex and its successor entity Kona Vistas LLC completed development of the entire 103 acres in Increment I.

In the process, they paid for the water commitments for the entire water system for both Increments I and II; had most of the project site (except for 5 acres planned for future use by Hawaii Preparatory Academy) covered by an Archeological Inventory Survey (“AIS”); provided DPW with a drainage master plan for the project; worked with government agencies to build the Lako Street-Kuakini Highway intersection; contributed the fair share of the costs for that intersection; built the Lako Street Extension and dedicated it through the mauka-makai portion of the project; built and dedicated the Leilani Street extension, the Pualani Street connection, the Kilohana Street extension; and obtained a 12-acre site outside the project area to satisfy the project’s affordable housing requirements for both single-family and multi-family portions of the project among other actions.

They obtained an Environmental Assessment “Finding of No Significant Impact” (“FONSI”) and Negative Declaration by the DPW from the Office of Environmental Quality Control (“OEQC”) on 3-22-96 for an SMA Permit application on the 12-acre parcel; obtained SMA Permit No. 430 for the 12-acre parcel; worked with the County and two private property owners to connect the County owned drainage system to the 12-acre drainage way by paying to buy properties at Royal Poinciana Drive and Kupuna Street in 2001; obtained a Conditional Letter of Map Revision (“CLOMR”) for the 70-acre multi-family zoned land in anticipation of constructing drainage improvements (Case No. 95-09-616R) issued on 3-25-95; and built and installed roadways, drainage improvements, driveways, light poles, utility infrastructure, landscaping and other assets required to complete a new community. They obtained County of Hawai’i Plan Approval dated 11-23-07 for 150 multi-family units to be built on approximately 17 acres of Parcel 3/7-6-021:016 (a portion of the 70 acres zoned RM-5).

Because of the extreme complexity in addressing various site conditions and in obtaining approval of various mitigation measures, the development process spanned several decades. They sought and obtained a number of amendments to rezoning ordinances in order to obtain the time to complete performance. These include: Ordinance 84-23 effective 5-15-84 granting the original conditional zoning; Ordinance 84-42 effective 7-31-84 adding 1.530 acres of land that was inadvertently left out of the original land description, Ordinance 88-4 effective 1-18-88 time extension to complete certain conditions, Ordinance 90-62 effective 5-27-90 granting time extensions, Ordinance 91-96 effective 10-1-91 granting time extensions; Ordinance 93-26 effective 4-7-93 involving additional time extensions, Ordinance 94-34 effective 4-5-94 amending effective dates of second increments of zoning for both single-family and multi-family

zoned portions of land, Ordinance 97-99 effective 7-14-97 involving time extensions for the multi-family portions, and Ordinance 02-131 effective 11-27-02 also involving time extensions for the multi-family portions of the land.

The CPD granted Final Subdivision Approval for all four Units for the Increment I single-family zoned land. There are now about 209 single-family residential lots (10 of these are CPR lots) in these four Units, with about 90% of the lots being built on and the rest vacant.

Gamrex and its successor entity Kona Vistas LLC were owned by a Japan group, whose majority owner and President spearheaded the Kona Vistas project development. After his death, the group lost interest and the ability to complete development of this project, which started 39 years ago. In December, 2015, Kona Vistas LLC sold the remaining land to two Hawai'i-based development entities: KV3 LLC and Kona Three LLC, which entities have filed with the LUC a Petition for Substitution of Kona Vistas LLC in Docket A83-549. The remaining land included about thirteen lots in Unit 4 and Unit 3 of the Kona Vistas subdivision together with three roadway lots and some remnant lots in Unit 4 and Unit 1 which were transferred to KV3 LLC, of which I am a Member. The multi-family zoned parcels totaling about 70 acres (TMK's 3/7-6-21:016 & 017) were transferred to Kona Three LLC, of which I am a Member.

KV3 continues to work with DPW, CPD and the County of Hawaii Corporation Counsel ("Corp Counsel") to complete dedication of the 3 remaining roadway lots. The dedication deed form was approved by Corp Counsel. We are now working with DPW on a checklist for punch list items that need to be completed to allow the County to accept dedication. There has been a substantial delay in the completion of the dedication due to County concerns about a "berm wall" that the County wants built at the NE corner of Phase IV of Kona Vistas subdivision, on three privately owned lots that border the County owned "Holualoa Ditch" drainageway. KV3 owned one of the three affected lots, but the other two were owned by another private party, and KV3 had to negotiate an agreement with said party that allowed the wall to be built. We successfully completed an agreement, and expect completion of the wall in September, 2018, and completion of the Dedication process of the roadway lots shortly thereafter.

Per the County of Hawaii's instructions, Kona Vistas LLC deposited a Deed to the County of Hawaii for the 12-acre affordable housing parcel in escrow to satisfy the affordable housing requirements for the entire project (173 acres which covers both the single-family and multi-family portions).

Escrow instructions for the Deed instructed escrow to record said Deed upon County instructions, which were anticipated to be forthcoming once we obtained a CLOMR and design approval for drainage improvements related to the 12-acres, per OHCD instructions. For reasons unknown, escrow recorded said Deed in error without having received instructions from the County or anyone else (see attached copy of Deed to County). Corporation Counsel objected to the recording of said Deed prior to the County

completing a preliminary EA on the land, and had the Deed reversed (see attached copy of Disclaimer of Interest in Real Property). This resulted in title being conveyed back to Kona Vistas LLC, which in the meantime had commenced with action to dissolve their existence and go out of business. We took action to take title to the 12 acres prior to said dissolution of Kona Vistas LLC to avoid losing the 12 acres for affordable housing, and now own the property through a related holding company entity (see attached copy of Deed to Kona Vistas Holding Company LLC).

Kona Three LLC's hydrological engineer and other advisors are working on a Conditional Letter of Map Revision ("CLOMR") submittal to FEMA and the County DPW, which we expect to be submitted next month and approved next year. Once the CLOMR and improvement design are approved by FEMA, we intend to work with OHCD (the affordable housing supervising agency) to complete the conveyance of the affordable housing site and thus fulfill the affordable housing requirement for the entire project (both existing single-family and to-be-built multi-family zoned portions).

The AIS on a 5-acre portion of the multi-family property (copy of said AIS submitted with last Annual Report) has been approved (see attached SHPD approval letter). Our consultant is now working on a Preservation Plan, a Burial Treatment Plan, and a Mitigation Plan for the 5-acres for review and approval by SHPD/Burial Council. The consultant also performed a review and field inspection of the other 65-acres comprising the balance of the multi-family site, and submitted a Letter Report to SHPD on the recommendation of CPD (Copy of said Letter Report provided in last Annual Report). SHPD has subsequently determined (see enclosed SHPD Letter) that the original Hammett AIS on the 170-acres was never approved, and therefore is requiring us to provide them an AIS on the 65-acres (the other approximately 102 acres have already been developed and sold). Our consultant is now preparing a Proposal for us.

We submitted an Application for Request for Extension of Deadline regarding Ordinance 02-131 (copy of App and Transmittal Letter attached) on 4-14-16. CPD has held this Application in abeyance while certain clarifications were made and waiting for SHPD to approve the 5-acre AIS (which has recently been achieved). The CPD also had several other concerns, including desiring the withdrawal of a Plan Approval previously obtained for a 120-unit multi-family project on a portion of the 70-acres (see attached copy of the Withdrawal of County of Hawaii Planning Department "Plan Approval"); the completion of a flora and faunal assessment (see attached copy of "Botanical Survey and Vertebrate Fauna Assessment"); and the completion of the CLOMR on the 12-acre site (underway). We anticipate the County will process said Application soon.

II. Conditions of Approval (Docket No. A83-549)

Both LUC Approvals (Increment I and Increment II) had numerous Conditions to be fulfilled by Applicant. The Conditions and the status thereof are:

Increment I

- 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., FHA Section 245 program) intended to encourage home ownership by low and moderate income families.*

Per the discussion above, escrow erroneously recorded the Deed to the County, which was reversed by Corporation Counsel. As former Petitioner and title-holder Kona Vistas LLC was dissolving, current Petitioner has taken title to the 12-acre parcel via a holding company. Petitioner will convey said 12-acre parcel to the County upon completion of required actions including obtaining a CLOMR and design approval for drainage improvements.

- B. *In making the ultimate decision as to whether a historical or archeological site is significant enough to warrant preservation, the Petitioner shall consult with and accept the decision of the Historic Preservation Officer of the Department of Land and Natural Resources.*

The original AIS found no sites that needed preservation on the entire 173 acres. 103 acres have been fully developed, with no inadvertent finds. The remaining 70 acres have been reviewed and the majority of the lands have been deemed to have no sites requiring preservation, except for the burial site described above which will require preservation and a historic railroad track. We are now doing a new AIS on about 65 of those acres pre SHPD, and will submit to SHPD upon completion per the terms of SHPD letter (previously referenced and attached). We will monitor any development on the land and if there are any indications of a potential historical or archaeological site, will suspend activities that could impact the sites and will have an archaeologist review the situation to determine if further action, including consultation with SHPD as needed. This will be done throughout the development process.

- C. *Petitioner shall submit annual progress reports to the Commission, Department of Planning and Economic Development, and Hawaii County Planning Department as to its progress in satisfying these conditions.*

This report is intended to fulfill this requirement.

- D. *These conditions may be fully or partially released by the Commission as to all or any portion of the subject properties upon timely motion and provision of adequate assurance of satisfaction of these conditions by the Petitioner.*

To date, the Petitioner has not filed any such motion.

### Increment II

1. *Petitioner shall develop the Property in substantial compliance with the representations made to the Commission. Failure to do so develop the Property may result in reversion of the property to its former classification, or change to a more appropriate classification.*

The single-family component has been completed in substantial compliance with the representations. The multi-family component will also be developed in compliance.

2. *Petitioner shall give notice to the Commission of any intent to sell, lease, assign, or place in trust, or otherwise voluntarily alter the ownership interests in the property, prior to development of the Property.*

The single-family component of the project comprising the majority of the land was developed by the previous Petitioner. The undeveloped portion is the multi-family zoned portion of the Project, and will be developed by Petitioner or else Petitioner shall give notice to the Commission of any intent to sell, lease, assign, place in trust, or otherwise voluntarily alter the ownership interests in the property prior to development of the Property.

3. *Petitioner shall provide annual progress reports to the Land Use Commission, the Office of State Planning, and the County of Hawai'i Planning Department in connection with the status of the subject project and the petitioner's progress in complying with the conditions imposed.*

This report is intended to fulfill this requirement.

4. *The Land Use Commission may fully or partially release these conditions as to all or any portion of the property upon timely motion and provision of adequate assurance of satisfaction of these conditions by Petitioner.*

To date, no such motion or request has been filed.

5. *Petitioner shall record the conditions imposed by the Commission with the Bureau of Conveyances pursuant to Section 15-15-92, Hawai'i Administrative Rules.*

On March 5, 1984, the Petitioner filed with the Land Use Commission a copy of the Certificate of Conditions recorded in the Bureau of Conveyances on February 21, 1984, in Liber 176785, Page 712, for Increment I of the Petition Area.

6. *Within 7 days of the issuance of the Commission's Decision and Order for the subject reclassification, Petitioner shall (a) record with the Bureau of Conveyances a Statement to the effect the Property is subject to conditions imposed by the Land Use Commission in the reclassification of the Property, and (b) shall file a copy of such recorded statement with the Commission.*

On July 8, 1993, the Petitioner filed with the Land Use Commission a copy of the Certificate of Conditions recorded in the Bureau of Conveyances as Document No. 93-107610 and certified by the Registrar of Conveyances for Increment II of the Petition area.

End of Report by Richard Wheelock