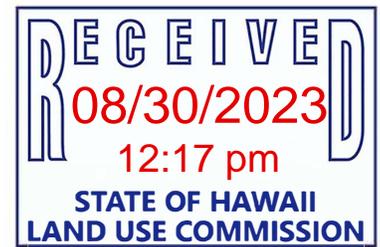


ANNUAL REPORT-2022 (Dated 12-28-2022)

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 for 2021 was filed with the LUC; OSP; and CPD dated 1-23-22. This annual report fulfills the obligation for 2022. I apologize for the tardiness of this Report, as it was due December 13, 2022.

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 zoned RS-15 in Increment I.

In the process, they obtained water commitments for the entire water system for both Increments I and II, paying for most of the commitments in advance; 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 at the County’s request, 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 included: 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 granting 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 has granted Final Subdivision Approval for all Units of the Increment I single-family zoned land. There are now about 215 single-family residential lots (10 of these are CPR lots) in these Units, with around 95% 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 Takashi Gamo spearheaded the Kona Vistas project development. After his death, the group lost interest and the ability to complete development of this project, which started over 40 years ago. In December, 2015, Japan-owned Kona Vistas LLC sold the remaining land to two Hawai'i-based development entities: KV3 LLC and Kona Three LLC. 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 also a Member.

KV3 and Kona Three, working with DPW, CPD and the County of Hawaii Corporation Counsel ("Corp Counsel") has completed drainageway improvements within and adjacent to Holualoa Ditch as approved by DPW, and then completed dedication of the 3 remaining roadway lots (Kekuana'oa Place; Liholiho Place & Kamamalu Place) to the County of Hawai'i.

Working with County Department of Water Supply (DWS), Kona Three LLC completed installation of a large water meter box off-site and adjacent to the project site to allow delivery of water for fire-flow protection for the planned project.

Kona Three LLC's hydrological engineer submitted a Conditional Letter of Map Revision ("CLOMR") application to FEMA and the County DPW in 2018 affecting the 12-acre site makai of the Project and Kuakini Highway designated to meet the Affordable Housing requirements. The CLOMR was issued 1-10-22 as Case No. 21-09-1757R, so the necessary drainage improvements can now be built and the property then developed.

As previously mentioned, previous developer Gamrex acquired nearby lands of approximately 12 acres at the urging of the County, which lands were designed to fulfill the Affordable Housing requirements for all single-family and multi-family units in the Project, as well as provide some area drainage improvements. On December 7, 1992, Gamrex and the County entered into an Agreement regarding this arrangement (copy attached), said Agreement requiring Gamrex to complete required drainage improvements from the mauka boundary of the 12 acres to Kupuna Street and convey the improved land to the County. This Agreement was extended numerous times until 12-31-2006.

Via letter dated July 10, 2015 (copy attached) the County requested of Gamrex/Kona Vistas LLC the completion of the developer's performance to convey the off-site vacant land property to the County (or its designated entity) to satisfy the affordable housing obligations of the project. This Letter disallowed Affordable Housing Credits to be used as satisfaction.

When Kona Three acquired the property later in 2015, Gamrex/Kona Vistas inquired of OHCD whether this Agreement was still in force, and Housing Administrator Susan Akiyama confirmed that the arrangement was still in force via Letter dated 10-7-2015 (copy attached).

Kona Three (via an affiliated entity which owns the land in question) then proceeded with the CLOMR application for the drainage improvements, with the intent to complete the CLOMR and then the drainage improvements, and then to convey the land to the County per the Agreement.

While processing the CLOMR over the ensuing years, a new County administration appointed a different Housing Administrator, Mr. Neal Gytaku. Mr. Gytaku informed Kona Three via Letter dated 10-31-2019 (copy attached) that OHCD has concluded that no affordable housing agreement exists, and that a new Agreement must be developed and signed. This Letter allowed Affordable Housing Credits to be used as satisfaction.

Working with OHCD and other land-owners and affordable housing developers, Kona Three (through its affiliate) came to an Agreement to pay for about 10 acres of land zoned RM-3.5 above Lowes so it could be conveyed to an affordable housing developer and be developed into 100 affordable housing rentals. This Agreement required 67 Affordable Housing Credits from the developer to fulfill the obligations for Affordable Housing for both the existing single-family lots (Kona Vistas) plus the to-be-built 450 multi-family units (Royal Vistas), as the obligation for Affordable Housing for the single-family lots had never been fulfilled. This Agreement was approved by OHCD, and was recorded 1-25-22 (copy attached).

Subsequent to the recordation of this Agreement, one of the Kona Councilmembers expressed dissatisfaction with the fulfillment of the Kona Vistas/Royal Vistas Affordable Housing requirements by the use of Affordable Housing Credits, even though the Agreement resulted in the development of 100 new Affordable Rental Units. As Kona Three is processing the Extension Request that will ultimately be ruled on by the County Council, it is anticipated that this issue will be discussed in the process.

Also subsequent to the Agreement being recorded, the Planning Department and the Office of the Corporation Counsel approached Kona Three with a legal position that the Agreement recorded couldn't be used to fulfill the Affordable Housing obligation as the LUBDA for Increment I of the Project (which includes much of the RM-2.5 zoned land for multi-family units) includes the following language in Condition A related to the provision of Affordable Housing: "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 family income as determined by the Hawaii Housing Authority or County of Hawaii from time to time.”

The Planning Department and Corporation Counsel were of the opinion that this language requires that the affordable housing fulfillment must be developed on-site due to the wording of this Condition, despite the fact that since 1992 the LUC has been informed of, and not objected to, the provision of the Affordable Housing fulfillment units being provided off-site. The Counsel for Kona Three disagreed with this interpretation, and this matter will need to be resolved in addition to the County Councils’ position on Affordable Housing.

Kona Three LLC; KV3 LLC; and their engineers continue to work with DPW on drainage solutions for the area. It is anticipated that changes will be made mauka of Queen Ka’ahumanu Highway to re-direct the drainage of Horseshoe Bend Drainageway which will require yet another CLOMR. This work will need FEMA and DPW approval, which will be sought once the zoning extension is achieved.

The SHPD took the view that the previous Archeological Inventory Survey (“AIS”) on the multi-family land needed to be updated. Our archeological consultant Scientific Consultant Services Inc. provided SHPD with a new AIS on the approximately 65 acres required, together with a Preservation Plan for the abandoned railroad berm and a single loose stone with a possible petroglyph. A Burial Treatment Plan for the single burial site found on the 5-acres has been completed and approved. SHPD approved the new AIS on October 15, 2021. The BTP was approved by SHPD and the Hawaii Island Burial Council effective August 19, 2019.

At the suggestion of the CPD, Kona Three presented their conceptual plans for the Project to neighboring community groups, including Kona Vistas residents and AOA Board members; Pualani Estates residents and AOA Board members; and other neighbors and their elected representatives in late 2017. Numerous concerns related to the Project were expressed, with a large majority of concerns related to traffic and road usage, especially by residents of the County roads that are planned for community circulation roads in accordance with Kona Community Development Plan Official Transportation Maps. These roads include Leilani Street; Kekuaana’oa Place; Ho’omama Street; and Paulehia Street.

These residents clearly don’t want these streets used for additional traffic as planned, but the Kona Community Development Plan and the County’s long-range plans call for the existing County-owned road grid to be expanded for community safety and traffic flow concerns. In addition, the existing Project Zoning Ordinance requires the Project to dedicate the connector roadways within the Project that will become part of the transportation grid eventually. So, Kona Three has altered the original development plan to provide the main access to the Project from Queen Ka’ahumanu Highway, with a secondary access from Kekuaana’oa Street in Kona Vistas. Previously planned connections to Pualani Estates subdivision have been eliminated from the plan. This

required a new Traffic Impact Analysis Report (“TIAR”) to be completed and submitted to State DOT-Highways and County Planning and Public Works departments.

As the County owns two narrow strips of land containing drainage pathways, one between our two multi-family properties and one adjacent to the south of our property, and as we will need to cross these strips of land, the CPD has required an Environmental Assessment (“EA”) as use of County owned land is a trigger under HRS Chapter 343. Kona Three’s consultants Stantec Consulting Inc. and Geometrician Associates completed the EA Application and submitted same to CPD, which published the DEA in July, 2020 and then again in August of 2020. A “Finding of No Significant Impact (“FONSI”)” was issued by the State Office of Planning and Sustainable Development dated September 13, 2021. Final EA is available for viewing at http://oeqc2.doh.hawaii.gov/Doc_Library/2021-09-23-HA-FEA-Royal-Vistas-Housing-Project.pdf.

Based upon the FONSI being issued, Kona Three re-submitted the Application for Request for Extension of Deadline regarding Ordinance 02-131 to the CPD, and the County Planning Department circulated the Application to agencies for review and comment in summer of 2022. Subsequently the CPD issued a positive recommendation for the Leeward Planning Commission’s consideration regarding the Application, as well as a Draft Revised Ordinance for the project (copies attached).

The Application was heard at the Leeward Planning Commission meeting on December 15, 2022. On December 14, 2022 Mr. Jackson Bauer, Trails and Access Specialist V of the Na Ala Hele Trails and Access Program’s Hilo office submitted follow-up comments (copy attached) to statements and questions he had submitted back in mid-July, 2022. His original statements were that a State-owned trail, well documented in archeological reports and affirmed by the State Attorney General, ran through the project area. No one was able to document these initial statements/claims, but Mr. Bauer remains concerned about the possibility of pre-contact trails being on the property, especially the possibility of the ancient trail known as Ke Ala Ko Wa’a, which was associated with a heiau located to the southwest of the project. Mr. Bauer recommended more research; honoring the alignment of any trails, even if archeological evidence has been displaced; and consulting with Na Ala Hele Trail and Access Program as well as with the Federal Ala Kahakai National Historic Trail Program to discuss further.

The LPC hearing included much public testimony, both for and against the project. At the end of the hearing, the LPC motioned and approved to send the project and Kona Three to the County Cultural Resources Commission for further investigation and discussion regarding the trails questions. Kona Three will diligently work with the CRC to resolve these matters.

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

As discussed above, the OHCD agreed to accept 67 Affordable Housing Credits as fulfillment of the Project affordable housing obligations in addition to the past due obligations of the single-family residential portion of the Project via a recorded Affordable Housing Agreement with the OHCD. However, the validity of that Agreement has been raised by the CPD and Office of Corporation Council, which needs to be resolved. Also, County Councilmembers may have differing opinions on what is required to fulfill Affordable Housing Requirements for the Project, and these opinions will also need resolution.

- 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. Of the remaining 70 acres, 5-acres has been found to contain one burial site, which now has an approved Burial Treatment Plan ("BTP"), and a historic abandoned railroad berm plus one random petroglyph which will require preservation. SHPD required an updated AIS on approx. 65 acres of Petitioner's land, and this AIS was approved 10-15-21. Kona Three will monitor any development on the land and if there are any indications of a potential historical or archaeological site, we will suspend activities that could impact the site and will have an archaeologist review the situation to determine if further action, including consultation with SHPD is needed. This will be done throughout the development

process. Kona Three will also commence further investigation regarding mauka-makai and any other trails in accordance with LPC instructions related to the CRC review.

- 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 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 2022 Report by Richard Wheelock