

**COUNTY OF HAWAI'I PLANNING DEPARTMENT**  
**RECOMMENDATION**

**KONA THREE LLC (FORMERLY GAMREX, INC.)**  
**AMENDMENT TO CHANGE OF ZONE ORDINANCE NO. 02 131 (REZ 470)**

Upon careful review of the request for a ten (10)-year time extension to Condition I (Complete Construction of the First Increment on RM Zoned lands) and an amendment to Condition N (Roadway Standards) to clarify which roadways within the subdivision are subject to the County Dedicable Standards of ordinance No. 02 131, the Deputy Planning Director is recommending that a favorable recommendation be forwarded to the Hawai'i County Council. Since this recommendation is made without the benefit of public testimony, the Deputy Director reserves the right to modify and/or alter the recommendation. This favorable recommendation is based on the following findings:

The applicant initially requested an extension of time of ten (10) years from the effective date of the amended ordinance by which to complete construction of the first increment/phase (258 multiple-family residential units) of the proposed development. The applicant has since clarified the request to a ten (10)-year time extension to complete the entire development. Condition I currently states:

*"I. plans for the development within the first increment of the RM zoned area shall be submitted to the Planning Department and final plan approval secured within five years from the effective date of this sixth amendment. Construction shall commence within one year from the date of receipt of final plan approval and be completed within three years thereafter;"*

Upon securing land use entitlements in 1983, then owner Gamrex Corporation and its development entity, Kona Vistas, LLC spent the next 23 years developing the initial phase of the development consisting of approximately 103.293 acres of RS-15 zoned lands into 215 single-family residential lots/units now known as the Kona Vistas subdivision. The developer secured a series of time extensions on the initial ordinance, which covered both the Kona Vistas subdivision lands and the subject properties totaling

68.837 acres (please note, due to Subdivision No. 18-00185, which consolidated and resubdivided a 1.675-acre portion of Parcel 17 with an adjoining property, the total land area that is subject to this amendment request is 67.162 acres). The last amendment occurred in 2002, which granted a time extension until November 27, 2007, to secure Final Plan Approval for the first phase of the multiple-family residential component within the RM-5 zoned area with its planned completion no later than November 27, 2011.

After substantial completion of the Kona Vistas subdivision, the owner lost interest/ability to complete the multiple-family component of the development and sold their remaining land holdings to two Hawai'i-based development entities, KV3, LLC and Kona Three LLC (applicant) in 2015. Upon this purchase, both entities have made a significant financial and time commitment to complete requirements of the ordinance as well as perform additional 'soft work' necessary to update and align various studies and previous obligations of the original landowner to be in a position to request additional time to complete the last remaining major residential development component that was originally envisioned by the State Land Use Commission (LUC) and County Council when the entitlements were granted.

Furthermore, as the ordinance was stale prior to their acquisition of the properties, the applicant found it necessary to address many project-related, supporting elements needed to be complete to ensure that this time extension request is consistent with the original reasons for granting the original land use entitlements, conforms to current land use policies, and addresses project related impacts in a responsible manner. These 'soft-work' elements are discussed further below.

The applicant also requests to amend Condition N as follows (material to be deleted is bracketed and struck-through; new material is underlined):

N. *the roadways and stubout within the RM zoned area, as shown on "Figure 3-Conceptual Building Layout" in the Final Environmental Assessment-Royal Vistas Housing Project dated September 2021, shall be constructed to dedicable standards with curbs, gutters, and sidewalks meeting with the approval of the Department of Public Works and shall be dedicated to the County of Hawaii upon completion. [~~Where a roadway crosses a zone~~*

~~line or if a zone line should divide a roadway, the curbs, gutters, and sidewalks shall be provided for the entire right-of-the-way and shall continue to the nearest intersection in order to avoid telescoping and to provide consistent improvement;]~~

Condition N currently requires that the roadways and stubouts within the RM-zoned lands need to be built to county dedicable standards. The proposed amendment to Condition N would clarify that the main roadways identified in Figure 3 of the Final EA would be constructed to dedicable standards and ultimately dedicated to the County since the proposed alignments provide the opportunity for future connection to the larger area road network.

The remainder of the roadways/driveways servicing the multiple family residential complexes will remain in private ownership and be built to non-dedicable standards.

Finally, deletion of the language at the end of the condition regarding roadway telescoping will allow the applicant to avoid tearing up Kekūanāʻo'a Place and re-constructing it to dedicable standards between its crossing at the Hōlualoa Ditch within the project site and its intersection within Kamehamalu Street within the Kona Vistas subdivision to the south.

Although the current RM-5 zoning would allow the development of up to 585 residential units on the 68.837-acre property, the applicant proposes to construct the "Royal Vistas" project as a 450-unit, multiple family residential housing project with:

- 174, two- and three-bedroom 'for rent' units and a manager's unit within two-story buildings on the *makai* portion of the project area.
- 274, two- and three-bedroom 'for sale' units, and a manager's unit, to be developed in clusters of two- and three-story buildings partially on the *makai* portion and the remainder on the *mauka* portion of the project area.
- Two (2) community centers, one for the 'for rent' units and one for the 'for sale' units. Each community center will include a neighborhood park, pool, and facilities for use by residents.
- Parking will be made available via on-site, paved parking lots and covered



structures.

- Public and private roadways.
- Drainage improvements.

According to the applicant, the project will be developed in two or more phases, with Phase I having a maximum of 258 units (include all the 'for rent' units and some 'for sale' units) to be constructed on no more than 42 acres within the *makai* portion of the subject parcels ("project site") and Phase II having the balance of 192 'for sale' units within the *mauka* portion.

According to the application, should the requests be approved, the applicant intends to submit plans for plan approval review within one (1) year. There is a discrepancy within the application on the anticipated timing of development where one section indicates that Phase I is anticipated to be complete by 2024 and Phase II by 2030, however, another section indicates that only completion of Phase I (maximum 258 units) of the 450-unit project is expected to be within ten (10) years from the date of approval of the requested amendments. The applicant addressed this discrepancy by indicating in writing that the entire project can be reasonably completed within ten (10) years of the effective date of the amendment, thus the request has changed to a ten (10)-year time extension within which to complete the entire development.

Assuming there are no additional cost-related conditions beyond those improvements required by Ordinance 02 131, the current estimated development cost of this project is \$170 million in 2022 dollars, including County exactions and fees.

**The non-performance is the result of conditions that could not have been foreseen or are beyond the control of the applicants, successors, or assigns, and that are not the result of their fault or negligence.** As discussed above, the applicant acquired the subject project site in 2015, a full four (4) years after the deadline to complete Phase I development of the RM-5 zoned lands pursuant to Condition I of Ordinance No. 02 131, thus the ordinance was already stale and would need to be amended prior to further development.

Since the applicant acquired the subject properties, they have expended significant, time, money and resources performing additional studies, planning, permitting, and design work ('soft work') necessary to request an amendment to the

ordinance for additional time to ultimately complete construction of the 450-unit multiple-family Royal Vistas development. This 'soft-work' includes working with the Office of Housing and Community Development (OHCD) to satisfy the affordable housing obligations for both the existing 215-unit Kona Vistas subdivision as well as for the proposed 450-unit Royal Vistas multiple family residential project; working with the County Department of Public Works (DPW) and the Federal Emergency Management Area (FEMA) to address the management, design, and planning implementation of improvement to both the Horseshoe Bend and Hōlualoa drainageways bisecting and bordering the project site; the submittal of two (2) previous ordinance amendment requests to the Planning Department that were ultimately returned for additional information updating archaeological, cultural impact, biological (floral/faunal), drainage and traffic impact studies that would inform the development of an environmental assessment (EA) for the Royal Vistas project; preparing a final EA and securing a Finding of No Significant Impact (FONSI) for the proposed project; working with stakeholders to develop a proposed access and roadway system to best address anticipated traffic volumes and movements generated by the proposed project while meeting the requirements of the Kona Community Development Plan (KCDP); and submitting a third amendment request that is the subject of this recommendation.

While the applicant purchased the subject properties with stale entitlements, they have been actively taking the extensive, necessary steps to ultimately develop the RM-5 zoned lands as anticipated by the original and successor ordinances. Based on the preceding, the Deputy Director has determined that the non-performance of required conditions of approval is the result of conditions that could not have been foreseen or are beyond the control of the applicant, and that are not the result of their fault or negligence.

**Granting of the amendments would not be contrary to the original reasons for granting the change of zone.** Then landowner GAMLON Corporation secured a State Land Use (SLU) Boundary Amendment from an Agricultural to an Urban SLU designation in January, 1984 via SLU Commission Docket A83-549, which is still an active decision and order (D&O) of the State LUC. As such, a condition of approval will require the applicant to comply with all conditions contained therein.

The original change of zone ordinance was granted shortly thereafter in May 1984 to change the zoning district from Unplanned to RS-15 (Kona Vistas subdivision) and RM-5 (project site). That ordinance was amended several times over the years, the most recent of which came in 2002.

The reasons for granting the original and latest change of zone ordinances have not changed. The project site has always been intended for a multiple-family housing development as the second increment of the overall development anticipated by the original change of zone and the proposed 450-unit, multiple-family development is consistent with this intent. Furthermore, as discussed below, the proposed development remains consistent with the General Plan and Zoning Code, whose designations have not changed since 2002.

The applicant anticipates that they will be able to complete the entire project within ten (10) years of the approval of this amendment, as such the Deputy Director proposes new Condition G, which updates existing Condition I to allow for the additional ten (10) years with our standard plan approval requirement language.

Appropriate infrastructure such as water, wastewater, and roadway access are available or will be constructed by the applicant to support the proposed 450-unit multiple family housing project.

Conditions of approval will require the applicant to maintain the water commitments with the Department of Water Supply (DWS) for 450 water units secured to develop the proposed project, construct necessary water system improvements to provide potable water and fire suppression, and to provide anticipated water usage calculations to DWS prior to each phase of project development to ensure that total water usage will not exceed this allocation. Furthermore, the applicant will be required to construct new sewer infrastructure to extend and connect to the County sewer in the area.

The applicant proposes to construct the following roadway facilities for the proposed project:

- 1) As represented in Figure 10 of the EA, Royal Vistas Roadway will be designed as a full-movement, channelized, two-way, stop-controlled, intersection with Queen Ka'ahumanu Highway. A condition of approval will require the applicant to secure approval from the State Department of Transportation (DOT) for the development

of this intersection with the highway.

2) The internal public roadway system will be a series of county dedicable roadways generally meeting the location and alignment depicted in *“Figure 3- Conceptual Building Layout” in the Final Environmental Assessment-Royal Vistas Housing Project dated September 2021*. This includes the north-south segment of Leilani Street situated within the project site, which will stub out at both the north and south project boundaries and the north-south extension of Kekūanāo‘a Place from its existing terminus within the Kona Vistas Subdivision northward to stub out at the northern project boundary. Finally, Royal Vistas roadway will extend *mauka* from its intersection with the highway to connect to the Kekūanāo‘a Place extension. While Figure 3 proposes a segmented layout of the internal mauka-makai roadway from the highway to the Kekūanāo‘a Place alignment, the DPW prefers the alignment to be a continuous, linear design to allow for the best traffic flow.

The dedicable roadways will be designed to meet the requirements of a minor collector road including pavement, concrete curbs, gutters, and sidewalks with associated drainage features, streetlights, signs, and markings within a 66-foot-wide right-of-way and be dedicated to the County prior to issuance of a certificate of occupancy for any dwelling units in the development. The remainder of the internal roads servicing the multi-family dwelling structures will be designed and built to private driveway standards and will stay in private ownership and private maintenance.

Based on the preceding, while the Deputy Director agrees with the intent of the applicant’s proposed amendment language to Condition N to clarify which roads segments need to be built to dedicable standards, he does not support the language as written that references Figure 3 of the EA. Instead, Condition N is amended to clarify which roadway segments are to be dedicated and that the layout and design shall meet the approval of the DPW.

There are no irresolvable geological or topographical problems which cannot be rectified, or which would render the land unusable. Conditions of approval will require the applicant to develop a drainage master plan meeting with the approval of the Department of Public Works and construct any required drainage improvements prior to issuance of certificate of occupancy for any dwelling units within the development. Other



standard drainage and land alteration conditions of approval have also been added.

Affordable housing conditions of the LUC D&O and change of zone ordinances require the applicant to offer 10% of the lots or houses and lots to be developed on the subject properties for sale at affordable rates to low-to-moderate income residents of the State of Hawai'i as required by State or County housing agencies. To satisfy this requirement, GAMLON Corporation purchased a 12-acre parcel makai of Queen Ka'ahumanu Highway in the vicinity of the project site, which they agreed to convey to the County or their designated affordable housing developer to construct housing thereon. The LUC determined that this would satisfy the on-site requirement in the D&O.

As the parcel contains the confluence of the Hōlualoa and Horseshoe Bend drainageways, the applicant was required to address drainage issues on the property which included the preparation of an EA and issuance of a FONSI, a Special Management Area (SMA) Use Permit to do flood improvements within the SMA, and an application for a Conditional Letter of Map Revision (CLOMR) to the FEMA, to allow the flood-zone designated portion of the 12 acres to be channelized and developed.

Despite the preceding work, the County subsequently decided that this proposed 12-acre affordable housing site was not suitable to meet their goals for affordable housing, prompting the applicant to offer an alternative to satisfy the affordable housing obligations through the acquisition of 67 affordable housing credits via land exchange for land associated with the creation of a new 100-unit affordable rental project above Lowe's Home Improvement on land that the applicant will donate to a qualified affordable housing developer. This was memorialized via a new affordable housing agreement between the applicant and OHCD, executed on January 10, 2022.

Despite this agreement, the applicant has yet to acquire the 67 housing credits at the date of this writing. The Planning Department is also concerned that securing housing credits in lieu of offering built units on-site at affordable rates does not meet the requirements of the LUC D&O, thus a condition of approval will require the applicant to comply with the affordable housing requirements of the LUC D&O.

Finally, OHCD submitted a letter requesting that a condition be added to require compliance with Hawai'i County Code Chapter 11 – Housing, which is consistent with our practice of updating conditions on rezone amendments to standard conditions that



currently apply. As such, the Deputy Director recommends a condition requiring the applicant to comply with Chapter 11 Housing Code to ensure that County affordable housing requirements are met, with the 10% affordable housing units constructed on-site in compliance with LUC requirements counting toward the overall County affordable housing requirements.

**Granting of the amendments would not be contrary to the General Plan, Kona Community Development Plan, or Zoning Code.** The Land Use Pattern Allocation Guide (LUPAG) Map component of the General Plan is a representation of the document's goals and policies to guide the coordinated growth and development of the County. It reflects a graphic depiction of the physical relationship among the various land uses. The LUPAG Map establishes the basic urban and non-urban form for areas within the County.

The LUPAG map identifies the subject properties and its immediately adjacent area as "Urban Expansion Area" with a small area of "Low Density Urban" close to the highway. The "Urban Expansion Area" allows for a mix of high density, medium density, low density, industrial, industrial-commercial and/or open designations in areas where new settlements may be desirable, but where the specific settlement pattern and mix of uses have not yet been determined. The "Low Density Urban" designation allows for residential, with ancillary community and public uses, and neighborhood and convenience-type commercial uses with an overall residential density of up to six units per acre. The existing RM-5 zoning and the proposed 450-unit Royal Vistas multiple family residential project, if allowed to proceed, will establish a land use pattern consistent with the both the urban expansion and low-density development pattern recommended by the General Plan.

In addition, the proposed development meets the following goals, policies, and standards of the Land Use-Multiple Residential and Housing Elements of the General Plan:

Land Use-Multiple Residential

- *To provide for multiple residential developments that maximize convenience for its occupants.*
- *To provide for suitable living environments that accommodate the physical, social and economic needs of the island residents.*

- *To assure the use of multiple residential zoned areas and to curb speculation and resale of undeveloped lots only, the County may impose incremental and conditional zoning, which shall be based on performance requirements.*
- *Require developers to provide basic infrastructure necessary for development.*
- *Recreational area and/or facilities shall be considered in multiple residential development.*

### Housing

- *Attain a diversity of socio-economic housing mix throughout the different parts of the County.*
- *Maintain a housing supply which allows a variety of choice.*
- *Develop better places to live in Hawaii County by creating viable communities with decent housing and suitable living environments for our people.*
- *Improve and maintain the quality and affordability of the existing housing stock.*
- *Seek sufficient production of new affordable rental and fee-simple housing in the County in a variety of sizes to satisfactorily accommodate the needs and desires of families and individuals.*
- *Increase rental opportunities and choices in terms of quality, cost, amenity, style and size of housing, especially for low- and moderate-income households.*

The Kona Community Development Plan (KCDP) was adopted by Ordinance No. 08-131 on September 25, 2008 by the Hawai'i County Council and amended by Ordinance No 19-91 on September 18, 2019. The subject properties are situated within the Kona Urban Area (KUA), but not situated within a Transit Oriented Development (TOD) or Concurrency Zone.

The Official Transportation Network Map for the Nani Kailua Area designates three minor-collector roadways within the project area to: 1) connect County-owned Leilani Street within the Kona Vistas Subdivision with the County-owned Ho'omama Street within the Pualani Estates Subdivision; 2) connect County-owned Kekūānā'ō'a Place within the Kona Vistas Subdivision with County-owned Paulehia Street within the Pualani Estates Subdivision; and 3) connect the two new roadways with a *mauka-makai* roadway segment. As discussed earlier, the applicant intends to construct and dedicate roadway segments within the general alignment depicted in the KCDP.

Finally, given the existing RM Zoning, the proposed project can be developed pursuant to KCDP Policy LU-2.8: *Development Outside Transit Oriented Developments (TODs), but within the Kona Urban Area*, as a non-Traditional Neighborhood Design (TND) project through compliance with KCDP policy requirements for parks, street standards, wastewater, and sensitive resources.



The existing RM-5 zoning is consistent with the SLU urban designation and will complement the low and medium density development pattern of the surrounding community. Furthermore, the proposed 450-unit housing development will be developed in compliance with the requirements of the Zoning Code.

Since the last ordinance was granted, the Zoning Code was amended to add the concurrency provision (HCC Section 25-2-46), which requires that all rezonings, including time extension, address traffic, potable water, and civil defense siren concerns. As discussed earlier, the applicant has secured the necessary water units to develop the property as proposed.

There is an existing civil defense siren located approximately 2.18 miles northwest (*makai*) of the subject properties, which covers approximately 2/3rds of the project site. At the time of this writing both the applicant and Planning Department have been unsuccessful in acquiring a determination of adequacy from the State of Hawai'i Emergency Management Agency (HIEMA), therefore a condition of approval will require the applicant to install a siren prior to issuance of a certificate of occupancy, if required by HIEMA.

Finally, the concurrency section of the Zoning Code requires a Traffic Impact Analysis Report (TIAR) be developed if the proposed project is anticipated to generate more than 50 peak-hour vehicle trips, which the proposed project is anticipated to exceed. As such, the applicant commissioned SSFM to prepare an initial TIAR (dated May 2020) as part of the EA process and based on agency and public comments through that process the applicant submitted an updated TIAR dated November 2021.

The reports assumed that Phase I of the project (258-units) would be complete by 2024, with the remainder of the 192-units completed in 2029. All traffic for Phase I would access the project site from the Royal Vistas Roadway while in Phase II, the project would connect Kekūanāʻo Place through the Kona Vistas subdivision to Lako Street so traffic could access the project from both roadways.

The TIAR included analysis of AM and PM peak hour turn movements at eight (8) intersections in the vicinity of the project site at the present (2019), in 2024 at the completion of Phase I, and in 2029 at the completion of Phase II. All studied intersections currently operate at an acceptable Level of Service (LOS) and while some individual turn



movements deteriorate in 2024 and 2029 (with or without the proposed project), overall, all study intersection will continue to operate at an acceptable LOS. As such, no immediate local or area roadway mitigation was recommended or required per the Zoning Code.

Based on their review of the TIAR, the DOT recommended conditions of approval require the applicant to coordinate with DOT on any mitigation measures, including any pro-rata contributions that may be required for impacts to highway facilities, that a 10-year development schedule showing the phases, number of units, and associated transportation improvements be completed before occupancy of each phase, and that any state highway improvements required for the development shall be made at no cost to the State and conform to current federal and state design standards. A condition of approval will require the preceding.

DPW-Traffic Division recommended that the Queen Ka'ahumanu Highway/Royal Vistas Roadway intersection be limited to right-in/right out movements and Kekūanā'oa Place connection through the Kona Vistas Subdivision to Lako Street needs to occur from the outset of the proposed project and not as a part of the Phase II development. In response, the applicant has indicated no objection to connecting its project roadways to Kekūanā'oa Place prior to the issuance of certificate of occupancy for any residential unit within the proposed project. The preceding was added as a condition of approval.

**The request is not contrary to Chapter 205A, Hawai'i Revised Statutes, relating to Coastal Zone Management.** The project site is situated approximately 4,500 feet from the nearest shoreline and is not situated within the Special Management Area and there is no direct public access to the shoreline or mountains located within the project site. As such, the proposed development should not have any substantial adverse impacts on coastal processes or conditions, nor will its approval be contrary to the objectives and policies of Chapter 205A, HRS relating to Coastal Zone Management.

**The development will to the extent feasible, reasonably protect native Hawaiian rights if they are found to exist.** In view of the Hawai'i State Supreme Court's "*PASH*" and "*Ka Pa'akai O Ka' Āina*" decisions, the issue relative to native Hawaiian rights, such as gathering and fishing rights, must be addressed in terms of the

cultural, historical, and natural resources and the associated traditional and customary practices of the site.

Investigation of valued resources: The following studies/reports were conducted for all or portions of the project site: 1) Archaeological Studies – AIS (Hammatt et al. 1984; Hammatt et al. 1992; Escott and Escott 2018; Escott and Escott, August 2021); Archaeological Reconnaissance Survey/ Field Inspections (Hammatt and Folk, 1983; Escott, 2016); Burial Treatment Plan (*Burial Treatment Plan for Burial Site #50-10-57-30593 Located in Hōhualoa 1<sup>st</sup> Ahupua'a, North Kona District, Island of Hawai'i, TMK: (3) 7-6-021:017*); 2) Cultural Studies – “*A Cultural Impact Assessment for a 78.122-Acre property in Hōhualoa 1st Ahupua'a, North Kona District, Hawai'i Island, Hawai'i [TMK: (3) 7-6-021:016-019]*” dated June 2020 by SCS, Inc.; 3) Floral/Faunal Studies - “*Botanical Survey and Vertebrate Fauna Assessment, TMK 3-7-6-21: parcels 16, 17, 18 & 19 (78.324 acres) North Kona District, Island of Hawai'i,*” dated September, 2017 by Geometrician Associates, LLC.

The valuable cultural, historical, and natural resources found within the project site. The Escott and Escott 2018 AIS recorded 22 archaeological sites; primarily agricultural complexes and terraces associated with pre-Contact era through early post-Contact era to Historic era agriculture. Several Historic era walls and enclosures, a lava tube burial, and a portion of the old railroad berm were also documented in the report. Preservation was recommended for the burial and the railroad berm. SCS, Inc. submitted a draft Burial Treatment Plan, which was accepted by the Hawai'i Island Burial Council on August 15, 2019 with a determination to preserve the burial in place. By letter dated August 19, 2019, SHPD accepted the document and SCS finalized the document as a Burial Site Component of a Preservation Plan, which includes interim preservation buffers and archaeological monitoring, and long term preservation measures including a permanent, 20-foot preservation buffer from the outside perimeter of the burial portion of the lava tube, an additional 10-foot, no-build easement outside of the permanent preservation buffer, and the construction of a permanent, low rock wall with a gate for pedestrian access to be built under the direction of and inspected by a qualified archaeologist. A condition of approval will require adherence to the requirements of this approved plan.



The Escott and Escott August 2021 AIS identified 18 sites and one isolated find, including two newly identified sites and a petroglyph, with the remaining sites being previously documented, including pre-Contact to post-Contact enclosures, platforms, mounds, lava tubes, walls, a railroad berm, and complexes. Five previously identified sites were determined no longer present and two burials were disinterred and reinterred off-site in 1993. All the sites were assessed as significant under HAR §13-284-6 Criterion d. The railroad berm (Site 50-10-37-30592) was also assessed as significant under Criteria a and c and was recommended for preservation. The petroglyph (Site 50-10-37-31254) was also assessed as significant under Criterion e and was recommended for preservation. The burial and associated burial crypt and features associated with former burial site (Site 50-10-37-10012) were relocated, nevertheless SHPD recommends that the burial site be flagged for preservation in the form of avoidance and the previous site location will be monitored if construction activities occur near that location. The AIS recommends no further historic preservation work for the remaining sites.

By letter dated October 15, 2021, SHPD accepted the AIS, agreeing with the site integrity and significance of all the sites and making a determination of, "Effect, with agreed upon mitigation commitments." SHPD agrees with the preservation of sites 50-10-37-30592 and 50-10-37-31254 and mitigation in the form of archaeological monitoring during initial ground disturbance. Finally, SHPD agrees that the sites recommended for no further work have been adequately documented. Prior to permit issuance, SHPD requests that the following be submitted for review and approval: 1) An archaeological monitoring plan (AMP) for all initial ground disturbing activities; 2) An archaeological preservation plan (PP) for the two sites referenced above; and 3) Written and photographic documentation verifying implementation of interim protection measures for the two sites to be preserved. A condition of approval will require the applicant to adhere to these requirements.

The Cultural Impact Assessment included personal interviews sought to provide ethnographic and oral history of the project area. Three respondents provided information about the project site, and CIA concluded that, "*An analysis of the potential effect of the proposed construction of residences on cultural resources, practices or beliefs, its*



*potential to isolate cultural resources, practices or beliefs from their setting, and the potential of the project to introduce elements which may alter the setting in which cultural practices take place is a requirement of the OEQC (Nov. 10, 1997). Based on historical research and responses from the above listed contacts, it is reasonable to conclude that, there would be no traditional cultural practices affected and there would be no direct adverse effect upon cultural practices or beliefs in the broader project area region.”*

The biological survey report found that there are no designated or proposed critical habitats for endangered plant or animal species located within the project area. The study also concluded that no federally listed threatened or endangered plant species appear to be present on the property, nor are there any rare plant species or uniquely valuable vegetation types. Despite the preceding, the report referenced some mitigation measures to address endangered or threatened species that may traverse the area, including outdoor lighting mitigation for endangered and threatened seabirds, guidance on woody vegetation removal during Hoary bat pupping season, and guidance on vegetation removal related to the Blackburn’s Sphinx moth. By memo dated August 1, 2022, the State Department of Land and Natural Resources, Division of Forestry and Wildlife (DOFAW) concurred with the proposed mitigation measures. A condition of approval will require the applicant to comply with the proposed mitigation measures.

Possible adverse effect or impairment of valued resources and feasible actions to protect native Hawaiian rights: While the proposed project may have some effect on valued resources in the area, the proposed conditions of approval should minimize impacts to protect native Hawaiian rights.

Native vegetation may be destroyed by ground alternation and construction activities, however, there is no evidence that the flora in the area is particularly desired or used for cultural practices. There are no identified springs, pu’u, native forest groves, gathering resources, or other natural features present on or near the project site that would support traditional resource uses. Any project related impacts on endangered or listed fauna will be addressed by conditions of approval as recommended by the biological survey report with concurrence from DOFAW.

As mentioned above, impacts on identified archaeological resources will be addressed through the submittal and approval of Archaeological Monitoring Plans and Archaeological Preservation Plan for sites identified for preservation prior to land alteration as well as compliance with approved burial treatment. As archaeological remains could inadvertently be uncovered during development activities, a condition of approval will be added to address and mitigate any inadvertent finds.

With implementation of the mentioned conditions of approval the proposed action will not affect traditional Hawaiian rights.

Lastly, this recommendation is made with the understanding that the applicant remains responsible for complying with all other applicable governmental requirements in connection with the proposed use, prior to its commencement or establishment upon the subject properties. Additional governmental requirements may include the issuance of building permits, compliance with the Fire Code, installation of improvements required by the American with Disabilities Act (ADA), among many others. Compliance with all applicable governmental requirements is a condition of this approval; failure to comply with such requirements will be considered a violation that may result in enforcement action by the Planning Department and/or the affected agencies.

Based on the preceding findings, **the Deputy Planning Director recommends that a favorable recommendation be forwarded to the County Council to amend Ordinance No 02 131.** In addition, as the ordinance that is being amended is nearly 20 years old and as most of the conditions addressed requirements for the development of the RS-15 zoned lands (Kona Vistas subdivision), which have been fully developed, the Deputy Planning Director recommends that the existing conditions in the ordinance be deleted entirely. Newly added conditions address requirements specific to the development of the RM-5 zoned lands and reflect the current standard language for conditions of approval.

The accompanying draft bill to amend Ordinance No. 02 131 is provided for your consideration. Please note the proposed conditions of approval attached to the draft bill. Material to be deleted is bracketed and struck through; new material is underscored.

**KONA THREE LLC (FORMERLY GAMREX, INC.)  
AMENDMENT TO CHANGE OF ZONE ORDINANCE NO. 02 131 (REZ 470)  
CONDITIONS OF APPROVAL**

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- ~~[(A) — the zoning for the property shall be effective only after: (1) there are assurances satisfactory to the Departments of Water Supply and Planning, upon consultation with the State Department of Health, and the Division of Water and Land Development of the State Department of Land and Natural Resources, that a water source of sufficient quality and quantity has been established within two years from the effective date of this ordinance; provided that a maximum one-year extension to the two-year time limit may be granted by the Planning Director with reasonable and sufficient justification; and (2) an agreement, accompanied by an appropriate surety bond or other acceptable security, is executed with the Department of Water Supply for the actual development of a proven water source and its water transmission and distribution system within one year from the official date of compliance with condition A (1); provided that a one-year extension to the one-year time limit may be granted by the Planning Director with reasonable and sufficient justification; or (3) the Department of Water Supply issues a water commitment for the proposed development;~~
- ~~(B) — no subdivision or development of any portion of the land shall occur unless and until condition A has been complied with;~~
- ~~(C) — the Planning Director shall be mandated to initiate action for the repeal of this ordinance if conditions A or B have not been complied with;~~
- ~~(D) — the petitioner, its assigns or successors, shall be responsible for complying with all conditions of approval;~~
- ~~(E) — the zoning for the 49± acres designated by the State Land Use Commission as its second zoning increment shall not become effective until that land is certified by that commission to be within the Urban District;~~
- ~~(F) — the RS zoned area shall be developed in two increments. The first increment shall consist of a maximum of 59.5± contiguous acres, and the second, the remaining area. The effective date of zoning for the second increment shall be after~~



development has occurred in the first increment, as determined by the Planning Director. "Development" means the applicant has completed the on-site and off-site improvements within the first increment of the RS-zoned area and has dedicated the roadway to the County;

- (G) — subdivision plans for the first increment of the RS-zoned area shall be submitted within one year from the effective date of the zoning. Final subdivision approval shall be secured within two years from the effective date of this amendment;
- (H) — the RM-zoned area shall be developed in two increments. The first increment shall consist of a maximum of 42 acres of the Multiple-Family Residential-zoned land and the second increment, the remaining area. The effective date of zoning for the second increment shall be after the applicant has completed the on-site and off-site improvements of the first increment of the RM-zoned area and has dedicated the improvements to the County;
- (I) — plans for the development within the first increment of the RM-zoned area shall be submitted to the Planning Department and final plan approval secured within five years from the effective date of this sixth amendment. Construction shall commence within one year from the date of receipt of final plan approval and be completed within three years thereafter;
- (J) — should the Council adopt a Unified Impact Fees Ordinance setting forth criteria for the imposition of exactions or the assessment of impact fees, conditions included herein shall be credited towards the requirements of the Unified Impact Fees Ordinance;
- (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;
- (L) — improvements to the intersections with Kuakini Highway and the Kuakini Highway Extension shall be constructed meeting with the approval of the State Department of Transportation, Highways Division. The intersection improvements shall be constructed concurrently with the development of the first increment of the RS or RM-zoned areas, whichever occurs first;

- (M) — ~~no direct access shall be provided for the lots within the RS zoned area from the mauka-makai collector road;~~
- (N) — ~~the roadways and stubout within the RM zoned area shall be constructed to dedicable standards with curbs, gutters, and sidewalks meeting with the approval of the Department of Public Works and shall be dedicated to the County of Hawaii upon completion. Where a roadway crosses a zone line or if a zone line should divide a roadway, the curbs, gutters, and sidewalks shall be provided for the entire right-of-the-way and shall continue to the nearest intersection in order to avoid telescoping and to provide consistent improvement;~~
- (O) — ~~at a minimum, roadways and stubouts within the RS zoned area shall be provided with paved shoulders and paved swales meeting with the approval of the Department of Public Works and shall be dedicated to the County of Hawaii upon completion;~~
- (P) — ~~the method of sewage disposal shall meet with the approval of the appropriate governmental agencies;~~
- (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;~~
- (R) — ~~an intensive archaeological survey shall be conducted for the entire property and a report shall be submitted to the Planning Department prior to issuance of any subdivision or plan approvals;~~
- (S) — ~~should any unanticipated archaeological sites be found during land preparation activities, work shall immediately stop and the Planning Department notified. Work shall not resume in the affected area until clearance is given by the Planning Department;~~
- (T) — ~~prior to the Final Approval of the second increment, the applicant, its successors or assigns shall pay for any additional real property taxes owed for the new~~

residential assessed value of the subject property which was previously taxed at the agricultural rate; and

~~(U) an initial extension of time for the performance of conditions within the ordinance may be granted by the Planning Director upon the following circumstances:~~

- ~~a. the non-performance is the result of conditions that could not have been foreseen or are beyond the control of the applicants, successors or assigns, and that are not the result of their fault or negligence;~~
- ~~b. granting of the time extension would not be contrary to the general plan or zoning code;~~
- ~~c. granting of the time extension would not be contrary to the original reasons for the granting of the change of zone;~~
- ~~d. the time extension granted shall be for a period not to exceed the period originally granted for performance (i.e., a condition to be performed within one year may be extended for up to one additional year); and~~
- ~~e. if the applicant should require an additional extension of time, the Planning Director shall submit the applicant's request to the County Council for appropriate action. Further, should any of the conditions not be met or substantially complied with in a timely fashion, the Director initiate rezoning of the area to its original or more appropriate designation.]~~

- A. The applicant(s), its successor(s), or assign(s) ("Applicant") shall be responsible for complying with all of the stated conditions of approval.
- B. The Applicant shall comply with all conditions of approval of the State Land Use Commission's Decision and Order (Docket No. A83-549) dated January 26, 1984.
- C. The Applicant is responsible for maintaining valid water commitments to support the proposed use until such time that required water facilities charges are paid in full.
- D. Prior to receipt of Final Plan Approval for each phase of the development, the Applicant shall submit the anticipated maximum daily water usage calculations as prepared by a professional engineer licensed in the State of Hawai'i to the Department of Water Supply (DWS) to ensure that total water usage will not exceed



its allocation.

- E. The Applicant is required to submit water system construction plans prepared by a professional engineer, registered in the State of Hawai'i, for Department of Water Supply (DWS) review and approval. Furthermore, the Applicant is required to construct applicable water system improvements designed to deliver water at adequate pressure and volume under peak-flow and fire-flow conditions in accordance with the Water System Standards and the Rules and Regulations of the DWS.
- F. The Applicant shall implement any improvements required by the Fire Department and/or Department of Water Supply to ensure that fire protection requirements can be met for RM zoning.
- G. Construction of all phases of the proposed development, as substantially represented by the Applicant, shall be completed within ten (10) years from the effective date of this ordinance. Prior to commencing construction of each phase, the Applicant shall secure Final Plan Approval for the proposed development from the Planning Director in accordance with Section 25-2-70, Chapter 25 (Zoning Code), Hawai'i County Code. Plans shall identify all proposed structures, fire protection measures, landscaping, signage, paved driveway access and paved parking stalls, outdoor lighting (if any), and other improvements associated with the proposed development. Landscaping shall be indicated on the plans for the purpose of mitigating any adverse noise or visual impacts to adjacent properties in accordance with the requirements of Planning Department's Rule No. 17 (Landscaping Requirements). The Applicant shall comply with landscaping requirements for RM zoning.
- H. Sewer lines shall be installed within the development to connect with the County's sewer system, meeting with the approval of the Department of Environmental Management, and prior to the issuance of a Certificate of Occupancy for each phase.
- I. A National Pollutant Discharge Elimination System (NPDES) permit and an Underground Injection Control (UIC) permit, if required, shall be secured from the State Department of Health before the commencement of construction activities.

- J. All development generated runoff shall be disposed of on site and shall not be directed toward any adjacent properties. Prior to receipt of Final Plan Approval, that applicant shall submit a drainage master plan to the Department of Public Works for review and approval. 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. Any recommended drainage improvements shall be constructed meeting with the approval of the Department of Public Works prior to issuance of a Certificate of Occupancy for the first phase.
- K. The Applicant shall comply with Chapter 27, Flood Control, of the Hawai'i County Code.
- L. All earthwork and grading activity shall conform to Chapter 10, Erosion and Sedimentation Control of the Hawai'i County Code.
- M. Access to the Queen Ka'ahumanu Highway (Route 11) shall be limited to a single access point consisting of a full movement channelized intersection, the location and construction of which shall meet with the approval of the State Department of Transportation prior to the issuance of Certificate of Occupancy for the first phase. Furthermore, the applicant shall coordinate with the State Department of Transportation and provide any mitigation measures that may be required, including any pro-rata contributions, related to the state highway improvements directly related to traffic generated by development of the property. Part of this coordination shall include providing the Department of Transportation with a 10-year development schedule showing the phases, number of units, and the associated transportation improvements to be completed before occupancy of each phase.
- N. Prior to the issuance of a Certificate of Occupancy for any dwelling units within the development, the Applicant shall construct the following roadway improvements to County dedicable standards for a minor collector road and dedicate the improvements to the County: 1) the segment of Leilani Street situated within the project site, which will stub out at both the north and south project boundaries; 2)

extend Kekūānāo'a Place from its existing terminus within the Kona Vistas Subdivision northward to stub out at the northern project boundary; and 3) a mauka-makai roadway from Queen Ka'ahumanu Highway to the Kekūānāo'a Place extension. Unless otherwise allowed by the Department of Public Works to address topographical and drainage constraints within the project site, the mauka-makai collector road shall be constructed as a continuous linear roadway.

O. The following plans/documentation shall be submitted for the review and approval of the State Department of Land and Natural Resources – State Historic Preservation Division and implemented prior to the issuance of any land alteration permits: 1) An archaeological monitoring plan for all initial ground disturbing activities that meets the requirements of HAR §13-279-4; 2) An archaeological preservation plan for Site 50-10-37-30592 and Site 50-10-37-31254 that meets the requirements of HAR §13-277; and 3) Written and photographic documentation verifying implementation of interim protection measures for Sites 50-30-37-30592 and 50-10-37-31254. Any interim and permanent buffers associated with preservation plan shall be depicted on any site plans for Final Plan Approval or other land alteration permits.

P. The Applicant shall implement all requirements of the Burial Site Component of a Preservation Plan accepted by the State Historic Preservation Division on August 19, 2022. All interim and permanent buffers associated with the burial site shall be depicted on any site plans for Final Plan Approval or other land alteration permits. Interim preservation measures shall be in place prior to the initiation of any construction or land disturbance activity in the project site.

Q. The former burial site (Site 50-10-37-10012) shall be flagged for preservation in the form of avoidance and the previous site location shall be monitored if construction activities occur near that location. The former burial site shall be depicted on any site plans for Final Plan Approval or other land alteration permits.

R. In the event that surface or subsurface historic resources, including human skeletal remains, structural remains (e.g., rock walls, terraces, platforms, etc.), cultural deposits, marine shell concentrations, sand deposits, or sink holes are identified during the demolition and/or construction work, the Applicant shall cease work in the immediate vicinity of the find, protect the find from additional disturbance and contact the State Historic Preservation Division at (808) 933-7651. Subsequent work shall proceed upon



an archaeological clearance from the State Historic Preservation Division when it finds that sufficient mitigation measures have been taken.

- S. To address potential impacts to endangered or threatened species that may traverse the project site, the Applicant shall implement mitigation measures recommended in the Botanical Survey and Vertebrate Fauna Assessment, TMK 3-7-6-21: parcels 16, 17, 18 & 19 (78,324 acres) North Kona District, Island of Hawai'i, included as part of the environmental assessment for the project.
- T. Pursuant to Hawai'i County Code, Section 25-2-46(o) (Concurrency Requirements) the applicant shall provide a civil defense siren and associated maintenance access easements within the project site if required by the State Civil Defense/State of Hawai'i Emergency Management Agency (HIEMA) prior to issuance of a Certificate of Occupancy for any phase of the project.
- U. The Applicant(s) shall make its fair share contribution to mitigate the potential regional impacts of the property with respect to parks and recreation, fire, police, solid waste disposal facilities and roads. The fair share contribution shall become due and payable prior to receipt of Final Subdivision Approval or Final Plan Approval, whichever is applicable. The fair share contribution shall be based on the actual number of residential units or lots developed. The fair share contribution in a form of cash, land, facilities, or any combination thereof shall be determined by the County Council. The fair share contribution may be adjusted annually beginning three years after the effective date of this ordinance, based on the percentage change in the Honolulu Consumer Price Index (HCPI). The fair share contribution shall have a maximum combined value of **\$10,033.83** per multiple family residential unit and **\$15,636.59** per single family residential unit). The total amount shall be determined by the actual number of units or lots according to the calculation and payment provisions set forth in this condition. The fair share contribution per multiple family residential unit (single family residential units) shall be allocated as follows:
  - 1. **\$4,949.40** per multiple family residential unit and **\$7,540.24** per single family residential unit) to the County to support park and recreational improvements and facilities;
  - 2. **\$156.43** per multiple family residential unit and **\$363.74** per single family residential unit) to the County to support police facilities;

3. \$481.18 per multiple family residential unit and \$718.44 per single family residential unit) to the County to support fire facilities;
4. \$214.47 per multiple family residential unit and \$314.54 per single family residential unit) to the County to support solid waste facilities; and
5. \$4,232.35 per multiple family residential unit and \$6,699.63 per single family residential unit) to the County to support road and traffic improvements.

In lieu of paying the fair share contribution, the Applicant(s) may contribute land and/or construct improvements/facilities related to parks and recreation, fire, police, solid waste disposal facilities and roads within the region impacted by the proposed development, subject to the review and recommendation of the Planning Director, upon consultation with the appropriate agencies and approval of the County Council pursuant to Section 2-162.1(a) of Hawai'i County Code. The cost of the highway intersection improvements required in Condition M shall be credited against the sum specified in Condition U for road and traffic improvements.

- V. Should the Council adopt a Unified Impact Fees Ordinance setting forth criteria for imposition of exactions or the assessment of impact fees, conditions included herein shall be credited towards the requirements of the Unified Impact Fees Ordinance.
- W. The Applicant shall comply with Condition A of the State Land Use Commission's Decision and Order (Docket No. A83-549) dated January 26, 1984. To meet this condition the Applicant shall provide ten percent (10%) of the total dwelling units constructed onsite (inclusive of 215 units in Kona Vistas Subdivision and any additional units to be developed on the project site) at affordable rates pursuant to an affordable housing agreement with the Office of Housing and Community Development unless the Decision and Order is amended. Units developed pursuant to this condition shall be applied towards satisfaction of Condition X.
- X. To ensure that the Goals and Policies of the Housing Element of the General Plan are implemented, the Applicant shall comply with the requirements of Chapter 11, Article 1, Hawai'i County Code relating to the Affordable Housing Policy for the subject 67.162-acre project site. This requirement shall be approved by the Administrator of the Office of Housing and Community Development prior to issuance of Plan Approval and the affordable housing agreement shall be

implemented prior to occupancy of any unit in each phase.

Y. The Applicant shall comply with all applicable County, State, and Federal codes, laws, rules, regulations, and requirements for the proposed development.

Z. An annual progress report shall be submitted to the Planning Director prior to the anniversary date of the enactment of this amended ordinance. The report shall include, but not be limited to, the status of the development and the extent to which the conditions of approval are being satisfied. This condition shall remain in effect until all of the conditions of approval have been satisfied and the Director, acknowledges that further reports are not required.

AA. If the Applicant should require an additional extension of time, the Planning Director shall submit the Applicant's request to the County Council for appropriate action.

BB. Should any of the conditions not be met or substantially complied with in a timely fashion, the Planning Director may initiate rezoning of the area to its original or more appropriate designation.