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**Via email: [dbedt.luc.web@hawaii.gov](mailto:dbedt.luc.web@hawaii.gov)**

State of Hawai'i Land Use Commission  
Department of Business, Economic Development & Tourism  
P.O. Box 2359  
Honolulu, Hawai'i 96804-2359



Dear Commissioners:

**SUBJECT:** County of Hawai'i Planning Department's Comments  
Petitioner Kona Vistas LLC  
Status and Progress Report In Response to the 2022 Annual Report  
Docket No. A83-549

The County of Hawai'i Planning Department has reviewed the Petitioner's 2022 Annual Report, as well as the Petitioner's Filings, and the request from the State Land Use Commission for a Status and Progress Report for the aforementioned Docket No. A83-549 and offers the following comments to the Land Use Commission of the State of Hawai'i. State Land Use Commission Docket No. A83-549 – Conditions for Increment I

On December 13, 1983, the State Land Use Commission approved the reclassification of lands within Increment I of the Petitioner's development plan consisting of 124.660 acres from the Agricultural to the Urban District. The Petitioner proposed to develop a single-family and multi-family residential subdivision on the subject property, with the exception of five acres owned by the Hawaii Preparatory Academy. They proposed to develop approximately 500 residential units of which 215 would be single-family residential units and 285 would be multi-family residential units. The single-family residential units were proposed to be built on approximately 103 acres, with each unit having a minimum lot size of approximately 15,000 square feet. The Petitioner estimated that the single-family density would be at approximately 2.1 units per acre. The multi-family townhouse residential units were proposed to be built on approximately 65 acres at an estimated density of RM-8.0 (1 unit per 8,000 feet of land area) or 4.4 units per acre. The approval of the reclassification was subject to the following four (4) conditions:

- 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 family income as determined by the Hawaii Housing Authority or County of Hawaii from time to time. The preferential lots or houses 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; and

- B. In making the ultimate decision as to whether a historical or archaeological 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; and
- 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; and
- 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.

#### Change of Zone Ordinances From 1984 to 1993

On May 15, 1984, Ordinance 84 23 was approved to change the zoning from Unplanned to Multiple Family Residential (RM-5) and Single Family Residential (RS-15) for TMKs: 7-6-021:004, 009-013, and 015-017. There were 19 conditions of approval added to the ordinance.

Condition E addressed the effective date of zoning for Increment II, which stated “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.”

Additionally, Condition J addressed the affordable housing requirements, which stated “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.”

Between May 15, 1984 (effective date of Ordinance 84 23) and May 10, 1993 (effective date of approval for incremental redistricting of Increment II), there were five Change of Zone

amendments for the project, which included Ordinance 84 42, Ordinance 88 4, Ordinance 90 62, Ordinance 91 96 and Ordinance 93 26.

Docket No. A83-549 – Conditions addressed for Increment I - Conditions added for Increment II

On May 10, 1993, the State Land Use Commission approved the incremental redistricting of Increment II consisting of approximately 49 acres from the Agricultural to the Urban District. The State Land Use Commission added the following Findings of Fact regarding the status of three (3) of the above referenced imposed conditions:

29. Petitioner has addressed Condition A by entering into an agreement with the County of Hawaii Housing Department providing for conveyance of the 12-acre parcel, Tax Map Key No. (Third Division) 7-6-24:25, to the County of Hawaii, in satisfaction of the affordable housing requirement.
30. Petitioner has addressed Condition B by receiving approval of its archaeological report from the State Historic Preservation Division of the Department of Land Natural Resources.
31. Petitioner has addressed Condition C by submission of Exhibit A to its Second supplemental Memorandum filed January 21, 1993, which the Commission accepted as Petitioner's Annual Report for 1992, and having filed previous annual reports with appropriate parties.

Additionally, the State Land Use Commission imposed the following additional conditions to Docket A83-549:

1. Petitioner shall develop the Property in substantial compliance with the representations made to the Commission. Failure to so develop the Property may result in reversion of the Property to its former classification, or change to a more appropriate classification.
2. 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 reports to the Land Use Commission, the Office of State Planning, and the County of Hawaii Planning Department in connection with the status of the subject project and the Petitioner's progress in complying with the conditions imposed.
4. The Land Use Commission may fully or partially release these conditions as to all or any portions of the Property upon timely motion and upon the provision of adequate assurance of satisfaction of these conditions by Petitioner.

5. Petitioner shall record the conditions imposed by the Commission with the Bureau of Conveyances pursuant to Section 15-15-92 1 Hawaii Administrative Rules.
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 that the Property is subject to conditions imposed by the Land Use.

#### Additional Change of Zone Ordinances From 1994 to the Present

After the State Land Use Commission approved the incremental redistricting of Increment II on May 10, 1993, there were three (3) additional Change of Zone amendments approved for the project. These include Ordinance 94 34, Ordinance 97 99 and Ordinance 02 131.

As a result of timing condition requirements of Ordinance 02 131 lapsing, the Petitioner has submitted an amendment application 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. This amendment application is currently pending before the Leeward Planning Commission.

#### Reports and Surveys Submitted with the Amendment Application for Ordinance 02 131

As part of the amendment application for Ordinance 02 131, the Petitioner prepared an Environmental Assessment (EA) pursuant to HRS Chapter 343 due to the proposed construction of roadway segments across county lands (the Horseshoe and Hōlualoa Drainageways). The EA was accepted by the Planning Department, who issued a Finding of No Significant Impact (FONSI) by letter dated September 13, 2021. The EA included an updated Traffic Impact Analysis Report (TIAR), a Biological Survey, a Cultural Impact Assessment (CIA), an updated Archaeological Inventory Survey (AIS) and a Preservation Plan. Also included within this process were consultations with area residents, specifically from the adjoining Kona Vistas subdivision.

As part of the process, the applicant prepared a new AIS for the remaining 65 acres of RM-zoned lands within the subject properties due to the age of the original AIS report. This new AIS has been completed and approved by State Historic Preservation Division (SHPD). Additionally, a new AIS was conducted for the 5-acre area that was not previously included in the original AIS, which found a previously unknown burial site in a lava tube. The applicant subsequently prepared a Burial Treatment Plan (BTP) that was approved by the SHPD and the Hawai'i Island Burial Council.

#### Compliance with the County's Zoning, General Plan and Kona Community Development Plan

The proposed development is within the State Land Use Urban designation, which was approved as part of a State Land Use Boundary Amendment for the larger development, which included

single-family and multiple-family residential development. The single-family residential portion of the proposed development has been completed. The remaining portion of the proposed development, zoned for multiple-family residential development, is seeking amendments to their Zoning Ordinance to construct and complete the overall development.

The proposed development is consistent with the County of Hawai‘i General Plan for this area. It is situated mainly within the Urban Expansion designation with a small portion located within Low Density Urban designation of the General Plan Land Use Pattern Allocation Guide (LUPAG) map. The Urban Expansion designation allows for a mix of uses, including higher density development. The land use element of the General Plan is intended to be used as a policy guide for the coordinated growth and development of the County.

The proposed development is situated within the Kona Urban Area (KUA) on the Official Kona Land Use Map within the Kona Community Development Plan. Most of the future growth in Kona will be directed to an Urban Area (UA) defined in the Official Kona Land Use Map. Within this Kona Urban Area, growth would be directed to compact villages located along proposed transit routes or to infill areas within, or adjacent to, existing development. This development is situated along the Queen Ka‘ahumanu Highway at its junction with Kuakini Highway (transit routes) and is situated between Pualani Estates subdivision to the north, Kona Vistas to the south and subdivisions zoned Residential Agricultural (RA) to the east (infill area adjacent to existing developments).

The Planning Department is recommending that the Leeward Planning Commission forward a favorable recommendation to the Hawai‘i County Council for the zoning amendment application.

#### Compliance with Relevant Conditions of Docket No. A83-549

##### Compliance with Condition A - Affordable Housing

Condition A relating to affordable housing (referenced above) was part of the original approval of Docket No. A83-549. On December 7, 1992, a Housing Agreement was executed between the County of Hawai‘i and Gamrex to comply with Condition A and the County’s rezoning condition relating to affordable housing. On May 10, 1993, the State Land Use Commission approved the incremental redistricting of Increment II and included Findings of Fact No. 29 stating in part that the “Petitioner has addressed Condition A by entering into an agreement with the County of Hawaii Housing Department providing for conveyance of the 12-acre parcel, Tax Map Key No. (Third Division) 7-6-24:25, to the County of Hawaii, in satisfaction of the affordable housing requirement”.

This was generally in effect until October 31, 2019, in which the Office of Housing and Community Development (OHCD) concluded that no affordable housing agreement exists between the two parties and a new agreement must be developed. The letter also stated that

OHCD is willing to negotiate an affordable housing agreement with Kona Three LLC, but no longer believes acquiring TMKs 7-6-24:25; 112 and 113 are in the best interests of the taxpayers.

On January 10, 2022, a new affordable housing agreement was signed between the County of Hawai'i and Kona Three, LLC. This is provided within the Petitioner's exhibits.

As mentioned above, the Petitioner has submitted an amendment application for conditions of Ordinance 02 131. As part of the favorable recommendation from the Planning Department to the Leeward Planning Commission, the following proposed conditions of approval have been included to address affordable housing conditions for the project:

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.

Regardless of any existing affordable housing agreement in place, the Planning Department believes that the agreement will need to be amended to reflect the above proposed conditions if approved by the Hawai'i County Council. This would include addressing the State Land Use Commission's condition requirements, as well County of Hawai'i's Chapter 11 requirements for affordable housing for this development.

#### Compliance with Condition B - Preservation of Historical and Archaeological Sites

Condition B relating to the preservation of historical and archaeological sites (referenced above) was part of the original approval of Docket No. A83-549. On May 10, 1993, the State Land Use Commission approved the incremental redistricting of Increment II and included Findings of Fact No. 30 stating that the Petitioner has addressed Condition B by receiving approval of its archaeological report from the State Historic Preservation Division of the Department of Land Natural Resources.

Additionally, as part of the Environmental Assessment and the Change of Zone Ordinance amendment application, the Petitioner prepared a new AIS for the remaining 65 acres of the RM-zoned lands within the subject properties due to the age of the original AIS report. This new AIS has been completed and approved by State Historic Preservation Division (SHPD). Additionally, a new AIS was conducted for the 5-acre area that was not previously included in the original AIS, which found a previously unknown burial site in a lava tube. The applicant subsequently prepared a Burial Treatment Plan (BTP) that was approved by the SHPD and the Hawai'i Island Burial Council.

Lastly, as part of the favorable recommendation from the Planning Department to the Leeward Planning Commission, the following proposed conditions of approval have been added to address preservation of historical and archaeological sites for the project:

- 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.

#### Compliance with Condition C and Condition 3 – Submittal of Annual Reports

Condition C relating to the submittal of annual progress reports to the State Land Use Commission, Department of Planning and Economic Development, and Hawaii County Planning Department as to its progress in satisfying these conditions (referenced above) was part of the original approval of Docket No. A83-549. Additionally on May 10, 1993, Condition 3 requiring the submittal of annual reports (referenced above) was added to the State Land Use Commission's approval of the incremental redistricting of Increment II. Included to the approval was Findings of Fact No. 31, which stated that the Petitioner has addressed Condition C by the submission of Exhibit A to its Second Supplemental Memorandum filed January 21, 1993, which the Commission accepted as Petitioner's Annual Report for 1992 and having filed previous annual reports with appropriate parties.

The County of Hawai'i Planning Department has consistently received copies of the annual progress reports from the Petitioner to the State Land Use Commission for this project, including the most recent report.

#### Compliance with Condition 1 – Substantial Compliance With Representations Made to SLUC

Condition 1 relating to the development of the Property in substantial compliance with the representations made to the Commission (referenced above) was added as a condition to the State Land Use Commission's approval of the incremental redistricting of Increment II on May 10, 1993.

Regarding the representations made in the original approval of Docket No. A83-549 in 1983, the Petitioner proposed to develop a single-family and multi-family residential subdivision on the subject property, with the exception of five acres owned by the Hawaii Preparatory Academy.

They also proposed to develop approximately 500 residential units of which 215 would be single-family residential units and 285 would be multi-family residential units. The single-family residential units were proposed to be built on approximately 103 acres, with each unit having a minimum lot size of approximately 15,000 square feet.

The Petitioner estimated that the single-family density would be at approximately 2.1 units per acre. The multi-family townhouse residential units were proposed to be built on approximately 65 acres at an estimated density of RM-8.0 (1 unit per 8,000 feet of land area) or 4.4 units per acre.

The County of Hawai'i Planning Department believes the reference to 4.4 units per acres should have been 5.4 units per acre, which would be consistent with 8,000 (square footage per unit) divided into 43,560 (square footage of an acre).



In the original approval of the State Land Use Commission reclassification of lands within Increment I on December 13, 1983, a condition relating to the development of the Property in substantial compliance with the representations made to the Commission was not included.

Condition 1 was added as a condition to the State Land Use Commission's approval of the incremental redistricting of Increment II on May 10, 1993. As part of the record for this proceeding, the County of Hawai'i Planning Department's testimony of support for the motion included the following information:

"4. Effective May 15, 1984, the Hawaii County Council approved Change of Zone Ordinance No. 84-23, which allowed for changes to the district classification of the entire 173.66-acre project site from an Unplanned (U) to a Multiple Family Residential-5,000 square feet per unit (RM-5) and a Single Family Residential-15,000 square feet (RS-15) zoned district. The Petitioner's proposal includes the development of 215 15,000 square-foot single family residential lots and 475 multiple family residential units. Of the 475 multiple family residential units planned, approximately 50 units were to be set aside for low and moderate income families."

#### County of Hawai'i Planning Department's Continued Support for the Development

This project is in an appropriate location pursuant to our County of Hawai'i General Plan and the Kona Community Development Plan. The land is designated as Urban Expansion and Low Density Urban, and is within the Kona Urban Area on the Official Kona Land Use Map. The project has always included single-family residences and multi-family residences with affordable housing residences. The single-family Kona Vistas portion was conceived and developed as part of the larger project which includes the multi-family portion. Now the single-family portion has been completed and the multi-family portion with the affordable housing residences remains to be completed.

The County of Hawai'i Planning Department has consistently supported this project through the original proceedings for the reclassification of lands within Increment I of the Petitioner's development plan in 1983, for the motion to extend time to complete substantial development of Increment I and to apply for incremental redistricting of Increment II in 1988, and for the incremental redistricting of Increment II in 1993.

The County of Hawai'i Planning Department continues to support the Petitioner's continued development plan to complete this project. The single family residential development portion of the project has been completed. The Petitioner is in the process of completing the multiple family residential development portion of the project, which requires amending the current zoning ordinance. This process has required lengthy and costly submittals of all necessary applications, reports, surveys, etc., including an Environmental Assessment. As mentioned above, the Planning Department is recommending that the Leeward Planning Commission

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forward a favorable recommendation to the Hawai'i County Council for the Petitioner's zoning amendment application.

Thank you for the opportunity to provide comments on this matter.

Should you have any questions, please feel free to contact me directly at [michelle.ahn@hawaiicounty.gov](mailto:michelle.ahn@hawaiicounty.gov) or (808)746-4995.

Very truly yours,

A handwritten signature in black ink, appearing to read "Ahn", written over a thin horizontal line.

Michelle S. Ahn

Deputy Corporation Counsel