

AMENDED COMMENTS TO LUC STAFF REPORT RECEIVED 2-5-24



In regards to Questions regarding Affordable Housing:

Mr. Takashi Gamo (Gamlon; Gamrex; Kona Vistas LLC, jointly Petitioner) bought 174 acres in Kona from Carlsmith and Dillingham families in '79/'80 and obtained Urban designation from the LUC (A83-549) in late 1983. The Decision and Order (D&O) had four Conditions, the first of which (Condition A) related to Affordable Housing.

LUBDA A83-549

- 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.

Two months later Petitioner submitted a Change of Zone Application to the County of Hawaii for zoning that would allow 215 SFD plus 475 MFD, for a total; of 690 units. The County approved the Zoning Change and issued an Ordinance, which had the following Condition related to Affordable housing (AH).

County Zoning Ordinance-1984

- J. 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.

Petitioner proceeded to plan and design two intersections to the then new Queen Ka'ahumanu Highway Extension, one for the SFD and the other for the MFD components. Further, Petitioner proceeded to subdivide both the SFD component and the MFD component, and built the first intersection which is now known as Lako Street intersection. The second intersection location was agreed upon by State, County and Petitioner, but was never built due to a problem involving two County-owned drainage-ways (Holualoa and Horseshoe Bend ditches) that ran mauka makai adjacent to and partly on the MFD land. This problem involved flooding that occurred occasionally downstream of the Project, but not on the Project, which the County wanted to address via a 1978 drainage plan design (Shimabukuro Report) master-planned for the area. The State and County did not agree on the County's preferred solution, which involved merging the two ditches mauka of Queen Ka'ahumanu, which would solve some downstream challenges including a 12-acre parcel downstream (Parcel :25) where the two ditches merged at that time (and continue to do so 'til today). Neither Petitioner, County, or State-owned Parcel :25.

Petitioner planned to convey Lot 1 of the MFD subdivision to the County as fulfillment for Condition A. Lot 1 was planned to accommodate 50 AH units. Due to the continuing unresolved drainage master plan issues, Petitioner could not subdivide MFD land, and could not deliver Lot 1 to the County. As the Incremental Redistricting of Increment II (MFD was in Increment I) required Petitioner to meet Condition A as to all units planned for Increment A prior to redistricting, and as Petitioner planned 475 MFD in the MFD, which was all in Increment I, it was apparent this could be a problem. As the redistricting was due by 1988, and the problem was not yet solved, Petitioner requested and was granted a five-year extension to the redistricting of Increment II, and continued to work on subdivision of the SFD and a solution to the continuing drainage issue.

In 1989, with the support of the County and knowledge of the LUC, Petitioner was able to acquire Parcel :25, and proceeded to design and permit the land for drainage improvements. It was subdivided into a drainage channel, a waste parcel with no access, and a remnant parcel that could be developed consisting of approx. 9 acres. As it could be delivered to developable standards faster than Lot 1 of the nearby MFD project, the Petitioner proposed to the County that they could have the 9-acre portion of Parcel :25 instead of the 5.8-acre Lot 1. The County analyzed Parcel :25, and agreed it was a better and quicker option, and made a Proposal to petitioner to acquire Parcel :25, which was appraised. Petitioner and County agreed on a value for the Parcel :25, including some costs advanced by petitioner, and granted 67.5 AH Credits to Petitioner based on "in lieu" fees, which are no longer used by the County.

67.5 AH Credits gave Petitioner credit for 675 total units. Petitioner downsized his projected total development plan from 690 units to 675 units (215 SFD + 450 MFD), and the County gave Petitioner full credit for the entire Project (215 SFD + 475 MFD), and this was memorialized in a 1992 AH Agreement between the County and the Petitioner. The Agreement required the Petitioner to complete the on-site drainage improvements for Parcel :25 prior to conveyance, and allowed the conveyance to take place either to the County or to a County-chosen AH Developer.

In 1993, Petitioner applied for the redistricting of Increment II, with County support. The 1992 AH Agreement for the off-site Parcel :25 was presented to the LUC, and the LUC approved the redistricting after approving the use of said off-site parcel :25 to fulfill the AH obligations for the entire project. This redistricting was memorialized in the Second D&O for Increment II, which added six new conditions, and made them apply to Increment I as well. This Second D&O was approved unanimously by the LUC Commissioners; the Attorney General; the County administration, the County Office of Corporation Counsel; and the Office of Housing and Community Development (OHCD), a division of the County Housing Agency which is comprised of all County councilmembers.

Petitioner and County proceeded with negotiations with two landowners between Holualoa ditch and the then-existing County drainage improvements (part of the 1978 master plan) and came to Agreement, which is recorded against Parcel :25. Then Petitioner did an EA. Then Petitioner did an SMA. Then the County discovered that Kupuna Street and an attached drainage culvert (a major component of the 1978 master plan) were not dedicated to the County when the neighboring subdivision was developed, and the mainland-based developer would not co-operate. The County eventually took over those improvements by Resolution. These actions took a number of years to complete.

Mr. Gamo died in Kona in the late '90's without the drainage improvements having been built. His Japan-based heirs knew nothing about development, and had few ties in Kona. They had lost faith in the development team that had by now developed over 100 of the SFD (now known as "Kona Vistas"), and brought in a Texas-based developer, Faulkner USA, to complete the SFD and develop the MFD. Petitioner obtained the Seventh (and last) Amendment to the County AH Agreement (it had two-year timelines for completion, which were extended seven time by numerous County Councils) in 2002. Faulkner USA (dba

Kona Vistas LLC in a Joint Venture with Petitioner) took over development of the SFD and completed subdividing Increment II of the Urban area in three Phases 2003-2006. This included developing and dedicating Lako Street to the County, which coupled with an adjoining project's portion of Lako Street, provided a major mauka-makai arterial serving Holualoa and tying into Queen Ka'ahumanu Highway.

Faulkner planned to resolve the county's drainage concerns above Queen Ka'ahumanu Highway and utilize Parcel :25 as fulfillment of the Condition A, but they did not obtain an extension of the AH Agreement in 2004. Faulkner was hammered by the 2007 Great Recession on-site, and their nationwide network of projects were essentially shut down due to lack of sales, including Kona Vistas and the MFD. In order to save their company, they entered into a refinancing arrangement with a large Texas institution that required a conveyance of all the Kona lands owned by Kona Vistas LLC which they did. This violated the Joint Venture Agreement with Petitioner, and legal action ensued, leading to the withdrawal of Faulkner USA from Kona Vistas LLC around 2011.

Kona Vistas LLC attempted to sell completed lots from afar, and tried to figure a way to proceed with development, but was not able to advance the project. Kona Three LLC and KV3 LLC took title to their Kona lands at the end of 2015, and proceeded to work on AH Condition A fulfillment. Prior to Kona Three purchasing the properties, OHCD had requested Petitioner to fulfill their obligations under the AH Agreement. Petitioner told OHCD they were selling the Property and requested confirmation that the completion of drainage improvements on Parcel :25 and conveying same to the County or their designated agent would fulfill condition A, and Kona Three proceeded to put together a CLOMR (Conditional Letter of Map Revision) that would allow the channelization to be built.

In 2018, the Feds adopted new FIRM maps, which doubled the "Q" (amount of water flowing through the ditch during the 1% event) of Holualoa ditch. This change by FEMA required alterations to the development of the 1978 master planned drainage improvements. To address the changes, Kona Three submitted a new CLOMR application to the Feds and County for processing in early 2019. Kona Three also submitted a new Affordable Housing Agreement (the 1992 Agreement had a time condition that expired in 2004) to OHCD (a different administrator had taken over OHCD as Director). In late 2019 this Director sent notice to Kona Three informing Kona Three that the 1992 AH Agreement was terminated; the County no longer wanted Parcel :25 because there was no guaranty the County-approved third part developer would complete the AH on Parcel :25; that Kona Three was responsible for the 10% Condition obligation as to the 215 SFD already developed (prior to Kona Three's ownership); and that Kona Three was now subject to County Chapter 11's 20% AH requirement as to the 450 planned MFD. The latter also pointed out Kona Three could use credits to fulfill Condition A's requirements.

Kona Three planned to obtain 67 AH Credits available from the development of the 306-unit Lokahi apartments in 2010. OHCD agreed with this approach and entered into a new Agreement with Kona Three based on this arrangement, and the Agreement was recorded 12-20-21.

Makani Maeva was involved in the development of Lokahi and is the principal of Ahe Group who is actively pursuing the development of the Kuakini Heights affordable housing project. After the recordation, the Ahe Group received substantial pushback to providing AH Credits to Kona Three as fulfillment of Condition A, to the point where Ahe Group asked to rescind that agreement, Kona Three complied and rescinded the agreement, so there is currently no nexus between the projects, nor any agreement or plan for Kona Three to obtain AH Credits from Kuakini Heights. The pushback on Ahe Group's Kuakini Heights continues to this day, in spite of the fact there is no plan to provide AH Credits to Kona Three from the project.

The Royal Vistas opponents then took the position that Condition A required building the AH on-site, and took this claim to the County. We hope to clarify this claim.

Staff Question 1: Is there a current affordable housing agreement between the Petitioner and the County?

Answer: Petitioner refers to the Agreement reached and recorded 12-20-21.

Staff Question 2: How does the County allow the trade/brokerage of affordable housing credits without units being built?

Answer: It is our understanding that units have to be built, or in some cases developable land provided; to obtain AH Credits under the County's HCC Chapter 1. Kona Three will defer to the County for clarification on this Question.

Staff Question 3: Where will the affordable housing units be built?

Answer: At this point the best locations appear to be on the Petitioner's 68 acres designated "Royal Vistas", which is part of the land urbanized in D&O for Increment I of A-83-549, or on Parcel :25 which petitioner still owns and has a CLOMR Permit in hand. Note this site will likely require a new EA and SMA Permit, as it was not part of the EA that Kona Three did a couple of years ago.

Staff Question 4: Why is Petitioner avoiding building affordable housing on the Petition area, as required by the Conditions in the Decision and Order?

Answer: Kona Three inherited a project with existing approvals for fulfilling Condition A off-site, per the D&O for Increment II approved in 1993 by all Commissioners; AG; County Administration; County Corporation Counsel; and Office of Housing and Community Development (a part of the County legislative body). The approved fulfillment of Condition A was given to us as a requirement, and we were (and still are) ready to complete the fulfillment using Parcel :25. After the County changed their position on this fulfillment method, we made a new Agreement which would fulfill the obligation via the development of a 100-unit rental above Lowes called Kuakini heights. This option is also deemed unviable by some.

Kona Three stands ready to fulfill the obligation at a site approved by LUC and/or County, but fulfillment will be subject to obtaining County Council approval of a zoning extension request that is vehemently opposed by various neighbors of the planned project.

Staff Question 5: The EA completed for the flood control and drainage controls seems to have missed a number of issues that were pointed out by Petitioner in the filing. The issues that were not identified include cultural sites, SMA, drainage issues, and the established railroad right of way.

Answer: The EA completed for the flood control and drainage issues applied to Parcel :25. This EA, as discussed above, will need updating before Parcel :25 can be developed. If this site is chosen for AH development as fulfillment of Condition A, then a new EA will be completed.

Note the railroad right of way follows the eastern boundaries of both 3/7-6-21:16 and :17, the RM zoned lands urbanized in 1983. This RR ROW was covered in Kona Three's EA a couple of years ago, as were cultural sites, and drainage issues. No SMA is required for these lands, so none exists. In addition to the EA, Kona Three has agreed to preserve the RR ROW in accordance with a plan approved by SHPD, as required in D&O Condition 2.

We hope this information provides some clarity to the history and current situation of Docket A83-549.

In the spirit of clearing the decks, Kona Three requests:

- 1) Clarification of the claim that the AH must be built on-site of the RM zoned land.
- 2) Clarification of whether the AH has to be "lots and houses and lots" as described in Condition A? Kona Three plans the project as apartments and condominiums, and does not plan to develop "lots".
- 3) Clarification as to whether the AH units have to be "For Sale", as referenced in the Condition A, or if they can be For Rent?
- 4) Will the County decide on the number of AH units to be built, as authorized by the D&O?

We appreciate your time and attention to this matter.

Respectfully,

Richard Wheelock, Member
Kona Three LLC