

# **ANNUAL REVIEW REPORT**

## **KYLE CANYON**

### **Development Agreement**

#### **Between**

#### **The City of Las Vegas**

#### **And**

#### **KAG Property LLC**

#### **(a.k.a. Wachovia Bank)**

Prepared By: CARWIN ADVISORS  
MICHAEL ROSS, P.E. LEED-AP  
8379 W. Sunset Rd. #150  
Las Vegas, NV 89113  
Phone# (702) 269-0043

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# **INTRODUCTION**

On May 16, 2007 The City of Las Vegas and Kyle Acquisition Group, LLC entered into a Development Agreement which became effective on August 8, 2007 (the “Development Agreement”).

On September 23, 2008 Wachovia Bank, acting as the managing creditor of 41 total creditors, foreclosed on the Kyle Canyon property. A new entity was formed called KAG Property LLC (the “Owner”).

The Development Agreement requires certain performance of the Owner and/or Designated Builders in exchange for reasonable assurances from the City that the Owner might develop the Planned Community in an orderly fashion. Additionally, the Development Agreement obligates the City to perform certain tasks and to insure that municipal services are provided to the Planned Community at the most economical cost to its citizens.

Section 9.01 of the Development Agreement and NRS Chapter 278 require that the Owner submit a report every year documenting material compliance with the terms of the Development Agreement within the preceding twelve months. In fulfillment of the NRS requirement and Section 9.01 of the Development Agreement, the Owner hereby submits this annual review to the City. This report provides a brief history of the project and addresses compliance by the Owner and the City with the terms of the Development Agreement. The summary details the total number of residential units built and approved for the calendar year.

The information contained herein is current as of June, 2010.

## **SUMMARY**

The existing Development Agreement by Kyle Acquisition Group allows for up to 16,000 residential units and 258 acres of commercial uses. Construction has not yet started on the Kyle Canyon Gateway master planned community. Therefore, zero residential units and zero commercial uses have been built. It is anticipated that no development will occur in 2010 or 2011. A conceptual plan revising the project to less intensive land uses has been developed with City staff and reduces the number of residential units to a maximum of 9,000. The Development Agreement is being revised to match this plan.

# **HISTORY OF THE PLANNED COMMUNITY**

In 2004 the City of Las Vegas developed a plan for 1,700 acres controlled by the BLM in the vicinity of the intersection of Kyle Canyon Road (State Route 157) and U.S. 95 located in Sections 6 and 7 of Book 125 and Section 12 of Book 125. The purpose of this plan was to develop policies and guidelines that foster a more sustainable, energy efficient and environmentally compatible development. A resolution, R-176-2004 also known as the NORA resolution, adopting key components of that plan that established the guidelines and goals was approved by the City of Las Vegas on December 1, 2004.

The land covered by the Kyle Canyon Gateway Plan was auctioned by the BLM in February 2005. The Kyle Acquisition Group LLC was the successful bidder. Kyle Acquisition Group LLC consisted of Focus Commercial Group and nine home builders.

On May 16, 2007 the Las Vegas City Council approved the Kyle Canyon Development Agreement and Design Guidelines; ZON-20543 and DIR-21605. Key components of the Design Guidelines are to create a community that is diverse in uses, is walkable, and provides a strong sense of community. The community will be connected by a series of trails and open spaces. The Design Guidelines also contain provisions to ensure that development is energy efficient, improves air quality and reduces water usage. On June 20, 2007 the City Council adopted the Development Agreement by ordinance.

The parent Tentative Map (TMP-25492) was approved by the Las Vegas Planning Commission on December 20, 2007. The Parent Final Map has been submitted to the City of Las Vegas and comments have been received. The Master Drainage, Traffic, Sanitary Sewer Studies have been approved and updates have been put on hold.

On September 23, 2008, Wachovia Bank foreclosed on the Kyle Canyon property forming a new ownership entity called KAG Property LLC. Neither Focus Commercial, nor the nine previous builders, no longer has an interest in the property. Wachovia Bank has hired Carwin Advisors of Las Vegas to manage the property.

# **CURRENT ACTIVITY**

## **HORSE INTERCHANGE:**

On April 16, 2009 KAG Property executed the Control of Access Donation for the Horse Interchange construction. Groundbreaking for construction was June 8, 2009.

## **PROPERTY TAXES:**

Prior to September 23, 2008 the property taxes were three quarters delinquent. KAG Property has brought the property tax payments current.

## **SHEEP MOUNTAIN PARKWAY:**

The Development Agreement, as currently approved, requires the future outer Beltway alignment to be aligned north – south along the western boundary of the property (Puli Road) and curve northeast through Section 1 north of the Kyle Canyon master plan. The future proposed alignment thru Section 1 requires the acquisition of numerous properties owned by many different owners. In light of the extreme challenges of purchasing these parcels and the limitations of using eminent domain for right of way acquisition, the existing diagonal beltway alignment is now being considered. This right of way alignment does not require additional property acquisition as a part of Kyle Canyon Master Plan.

## **STRATEGIC PLANNING / LAND USE PLAN:**

In light of the changing real estate market conditions and the consideration of the existing diagonal outer beltway alignment, KAG Property desires to study potential land uses in addition to those already approved to determine the highest and best uses for Kyle Canyon in today's market climate. An amended land plan will be analyzed as necessitated by the consideration of the existing diagonal beltway alignment and any alternative land uses that may be suitable for the master planned community.

On June 1, 2009 KAG Property engaged the services of Hart Howerton Land Planners to work in concert with the City to prepare a Summary Report of strategic market research to recommend the highest and best uses for Kyle Canyon in the current market place while still meeting the intent of the NORA resolution adopted December 1, 2004 and the intent of the existing Development Agreement. Hart Howerton is a nationally recognized land planning consultant having experience on large master plan communities throughout the United States of America and internationally. The strategic market research and recommendations, geographical constraints analysis and the review of surrounding neighborhood concerns was completed and presented to KAG Property and the City staff in the form of a Summary Report in October 2009. With this Summary Report the process of amending the Land

Use Plan began. A new Conceptual Plan that reduces the total number of residential units to 9,000 has been created by Carwin Advisors, KTG Y Planners and City Staff. The master traffic and drainage plans are being revised to match the new Conceptual Plan.

**SOUTHERN NEVADA HEALTH DISTRICT:**

KAG Property has made a concerted effort to continue to clean up debris and trash that has been illegally dumped by unknown parties on the Kyle Canyon property. Specifically along Grant Teton Dr. and along Grand Canyon Dr. in response to Southern Nevada Health District and City Public Works requests.

The following chart summarizes the status of the key requirements set forth in the Development Agreement and related documents.

# REQUIREMENTS

| Facility                        | Requirement                                                                     | Commencement                                                                                                                | Explanation of Requirement | City Action                                                                                | Developer Action                                                                            | Status                                                                                  |
|---------------------------------|---------------------------------------------------------------------------------|-----------------------------------------------------------------------------------------------------------------------------|----------------------------|--------------------------------------------------------------------------------------------|---------------------------------------------------------------------------------------------|-----------------------------------------------------------------------------------------|
| Telecommunications Facilities   | Telecommunications Facilities Map                                               | Within 6 months of recordation of Final Parent Map                                                                          | 3.13(b) of DA              | Ensure telecommunications Map is submitted within 6 months of Final Parent Map recordation | Submit telecommunications maps                                                              | Final Parent Map not recorded. On Hold pending new Land Use Plan with diagonal beltway. |
| ROW Agreement for Optical Fiber | Execute ROW Agreement for Optical Fiber                                         | At any time                                                                                                                 | 3.14 of DA                 | Ensure Agreement is in place                                                               | Reach agreement with City and pay                                                           | Agreement not Submitted to City                                                         |
| Town Center Standards           | Submit design standards for the Town Center and Urban Mixed Use areas           | 18 months after the effective date of the DA or prior to the issuance of the 3500 <sup>th</sup> residential building permit | 3.21(a) of DA              | Ensures standards are submitted and approved                                               | Submit standards                                                                            | On Hold pending new Land Use Plan with diagonal beltway.                                |
| Master HOA                      | Form Master HOA                                                                 | To be formed at time of Final Parent Map recordation                                                                        | 4.01(a)                    | Ensure Master HOA is formed                                                                | Form Master HOA                                                                             | Final Parent Map not recorded. On Hold pending new Land Use Plan with diagonal beltway. |
| Temporary detention basins      | City to maintain temporary detention basins                                     | Within 60 days of completion of First temporary detention basin                                                             | 4.04 of DA                 | Maintain detention basins                                                                  | Deposit \$100,000 into special account within completion of first temporary detention basin | No temporary basins have been constructed to date.                                      |
| CCSD acreage                    | Dedicate up to 72 acres to CCSD for school sites shown on master land use plan. | At any time                                                                                                                 | 5.01 of DA                 | None                                                                                       | Dedicate up to 72 acres to CCSD for school sites                                            | Requires recordation of parent final map.                                               |
| Fire Protection                 | Developer to pay City \$1,000,000 towards the Construction of a Fire Station    | 18 months after the effective date of the DA                                                                                | 5.02 (a) of DA             | None                                                                                       | Make payment to City                                                                        | On Hold pending new Land Use Plan with diagonal beltway and Summary Report.             |
| Fire Safe Community Program     | City to establish Fire Safe Community Program (FSCP)                            | Within 90 days of effective date                                                                                            | 5.02(d) of DA              | Establish (FSCP)                                                                           | Within 90 of notice from City that FSCP is established, pay City \$50,000 towards cost      | Program not set up                                                                      |
| Regional Transportation Center  | Dedicate 2.5 gross acres for transit hub                                        | None                                                                                                                        | 5.03(a) of DA              | None                                                                                       | Dedicate land                                                                               | Requires recordation of parent final map.                                               |



| Facility                                  | Requirement                                                                                                                                                             | Commencement                                                                                                    | Explanation of Requirement | City Action                                                                                                                                                                   | Developer Action                                                                 | Status                                                                                                      |
|-------------------------------------------|-------------------------------------------------------------------------------------------------------------------------------------------------------------------------|-----------------------------------------------------------------------------------------------------------------|----------------------------|-------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|----------------------------------------------------------------------------------|-------------------------------------------------------------------------------------------------------------|
| Police Services                           | Designated Builders to pay City \$218 per residential unit towards the construction of a Metro substation.                                                              | Payment to be Received when building permits are issued by the City                                             | 5.04 of DA                 | Collect fees                                                                                                                                                                  | None                                                                             | No fees due. Requires recordation of the parent final map.                                                  |
| Northern Beltway 'Sheep Mountain Parkway' | Dedicate ROW with Section 1 and within Providence. No longer required for diagonal beltway.                                                                             | Prior to recordation of Parent Final Map                                                                        | 7.05 (a) of DA             | None                                                                                                                                                                          | Dedicate land                                                                    | Re-aligning northern beltway to be in existing diagonal easement.                                           |
| Kyle Canyon Interchange                   | Developer to pay City \$10 million for interchange                                                                                                                      | Within 60 days of notification from City that design is complete                                                | 7.06 (a) of DA             | Design interchange                                                                                                                                                            | Make payment to City                                                             | Design of Interchange being revised due to diagonal northern beltway                                        |
| Horse Drive Interchange                   | City shall use its best efforts to complete Construction.                                                                                                               | Within 30 months of effective date                                                                              | 7.06 (b) of DA             | Construct interchange                                                                                                                                                         | None                                                                             | Construction started June 8, 2009.                                                                          |
| Park Area Conceptual Plan                 | Developer to submit conceptual plan for each Park Area                                                                                                                  | Prior to issuance to 500 <sup>th</sup> residential permit                                                       | 5. B) of Parks Agreement   | Notify Developer when 400 <sup>th</sup> permit is issued in each Park Area. Review plans and drawings.                                                                        | Design conceptual park plans                                                     | Trigger not yet reached                                                                                     |
| Park Plans                                | Developer to submit 90% construction Drawing to City within 180 days of City's approval of conceptual plans and 100% plans within 90 days of City's review of 90% plans | To start after conceptual plans are approved by City                                                            | 5. C) of Parks Agreement   | Review and comment on park plans                                                                                                                                              | Design park plans                                                                | Trigger not yet reached. Conceptual plan not submitted or approved.                                         |
| Construction of HOA Parks                 | Developer to commence construction of each park within 90 days of City's final approval of construction drawings                                                        | To start after construction Drawing and specifications are approved by City                                     | 5. D) of Parks Agreement   | None. Accept parks in lieu of RCT up to a maximum of 16,000 residential units.                                                                                                | Construct and dedicate amenities to City or HOA as specified in Parks Agreement. | Trigger not yet reached                                                                                     |
| Indian Hills Park                         | Developer to commence construction of park                                                                                                                              | Within 180 days of receiving notice from City                                                                   | 5. E) of Parks Agreement   | Notify Developer that plans are complete and adequate flood control facilities are in place. Accept park in lieu of RCT. Begin maintenance within 30 days of park completion. | Construct park within 18 months of commencement                                  | Design Plans received from City. On hold pending revision of the Development Agreement and Parks Agreement. |
| Iron Mountain Park                        | Developer to design and construct park                                                                                                                                  | Within 180 days of receiving notice from City that 7000 <sup>th</sup> permit For residential dwelling is issued | 5. F) of Park Agreement    | Notify Developer that trigger is reached and adequate flood control facilities are in place                                                                                   | Design and construct park                                                        | Trigger not yet reached                                                                                     |

| Facility                                                           | Requirement                                                         | Commencement                                                    | Explanation of Requirement                     | City Action                                                                        | Developer Action                                                         | Status                         |
|--------------------------------------------------------------------|---------------------------------------------------------------------|-----------------------------------------------------------------|------------------------------------------------|------------------------------------------------------------------------------------|--------------------------------------------------------------------------|--------------------------------|
| Moccasin Park                                                      | Developer to design and construct park.                             | Within 90 days of City final approval of construction drawings. | Paragraph 7 of the Parks Agreement.            | Accept park in lieu of RCT. Begin maintenance within 30 days of park completion.   | Construct park and dedicate amenities to City.                           | Plans have not been submitted. |
| Arroyos                                                            | Developer required to protect the existing North and South arroyos. | None                                                            | Park Agreement Exhibit C – Required Facilities | Review and comment on conceptual layout for arroyos                                | Design and construct layout adjacent to arroyos                          | Plans have not been submitted. |
| Community Centers<br>(West Parks, East Parks and Town Center Park) | Developer to design and construct parks.                            | None                                                            | Park Agreement Exhibit C – Required Facilities | Review and comment on conceptual layout for each 5 acre Park with Community Center | Design and construct Community Centers. Dedicate to HOA for maintenance. | Plans have not been submitted. |



## INFRASTRUCTURE

| Item                         | Document             | Performance Requirement                                                          | Status                                                                                                                                                         |
|------------------------------|----------------------|----------------------------------------------------------------------------------|----------------------------------------------------------------------------------------------------------------------------------------------------------------|
| Sanitary Sewer               | ZON-20543<br>3.02(c) | None                                                                             | Off site design approval pending                                                                                                                               |
| Flood Control and Drainage   | 7.07 of DA           | Design and construct all drainage facilities identified on Master Drainage Study | Master Study was approved on March 29, 2007. A study revision was submitted to the City on June 22, 2010 and is being reviewed. Construction has not commenced |
| Special Improvement District | 8.01 of DA           | Form SID                                                                         | Application on hold                                                                                                                                            |
| Offsites                     | 3.02(c)              | None                                                                             | No permits issued                                                                                                                                              |

## TRANSPORTATION IMPROVEMENTS

| Item                        | Performance Requirement                                                                                       | Reference                                    | Status                                                                                                      |
|-----------------------------|---------------------------------------------------------------------------------------------------------------|----------------------------------------------|-------------------------------------------------------------------------------------------------------------|
| Traffic Study               | Prepare and Submit a Master Traffic Study                                                                     | ZON-20543                                    | Approved A revision to the traffic study matching the Conceptual Plan will be submitted to the City in July |
| Transportation Improvements | Construct all Village Streets as indicated in Master Traffic Study within 24 months of start of construction. | 7.04(a) and 3.02(c) of Development Agreement | None of the Village Streets are under construction at this time                                             |
| Traffic Signals             | Developer will construct all traffic signals identified in the Master Traffic Study                           | 7.04(b) of DA                                | None of the traffic signals are under construction at this time                                             |

## GAMING ENTERPRISE DISTRICT

| Item                                                         | Performance Requirement | Reference                                                                                                            | Status   |
|--------------------------------------------------------------|-------------------------|----------------------------------------------------------------------------------------------------------------------|----------|
| Gaming Enterprise Overlay District<br><br>Special Use Permit | None                    | ZON-20475 approved by City Council on May 16, 2007.<br><br>SUP-20478 approved by City Council on September 19, 2007. | Approved |

## MODIFICATIONS TO DESIGN GUIDELINES

There have been two approved Major Modifications to the Design Guidelines in accordance with Section 3.03 (d). The following table is a summary of the approved changes.

| <b>MOD Number</b> | <b>Approval Date</b>    | <b>Action</b>                                                                                                                                        |
|-------------------|-------------------------|------------------------------------------------------------------------------------------------------------------------------------------------------|
| <b>MOD-22589</b>  | <b>August 15, 2007</b>  | <b>Realigned Iron Mountain Road and clarified Common Element width on certain cross sections</b>                                                     |
| <b>MOD-25875</b>  | <b>February 6, 2008</b> | <b>Renamed Village Streets internal to project, updated street cross sections for new names, and clarified certain street cross section diagrams</b> |

## CONCLUSIONS

The ownership of the property has changed to Wachovia Bank (a.k.a. KAG Property LLC) thru foreclosure. This change of ownership has made the acquisition of additional parcels for the Northern Beltway no longer feasible resulting in the need to revise the land use plan to accommodate the existing diagonal beltway alignment. In light of this and the current real estate market climate, the new owners retained the services of Hart Howerton Strategic Planning Consultants to perform a strategic market analysis that produced a Summary Report of findings and potential land use recommendations. The Summary Report was presented to the City on October 2, 2009. Based on the recommendations of this report, a Conceptual Plan was created by Carwin Advisors and the City. Carwin Advisors and KTG Y Planners are now in the process of refining the Conceptual Plan by creating lotting studies of various parcels. These studies are being presented to City staff for review and comment on an ongoing basis.