BEFORE THE LAND USE COMMISSION

OF THE STATE OF HAWAI`I

2010 DEC -3 A 11: 52
LAND USE COMMISSION
STATE OF HAWAII

In The Matter Of The Petition Of	)	DOCKET NO. A07-774
	)	
`O`OMA BEACHSIDE VILLAGE, LLC	)	SUPPLEMENTAL FINDINGS OF FACT, CONCLUSIONS OF LAW, AND DECISION AND ORDER
	)	
To Amend the Conservation Land Use District Boundary into the Urban Land Use District for approximately 181.169 acres at `O`oma 2nd, North Kona, Island of Hawai`i, State of Hawai`i; Tax Map Key Nos. (3) 7-3-009: 004 (por.), and (3) 7-3-009: (portion of State Right-of-Way)	)	

SUPPLEMENTAL FINDINGS OF FACT, CONCLUSIONS OF LAW, AND DECISION AND ORDER

This is to certify that this is a true and correct copy of the document on file in the office of the State Land Use Commission, Honolulu, Hawai`i.

December 3, 2010 by

Executive Officer

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LAND USE COMMISSION
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SUPPLEMENTAL FINDINGS OF FACT, CONCLUSIONS OF LAW, AND DECISION AND ORDER

NORTH KONA VILLAGE, LLC, a Nevada limited liability company, now known as 'O'OMA BEACHSIDE VILLAGE, LLC ("Petitioner"), filed a Petition for District Boundary Amendment ("Original Petition") on April 3, 2007, as amended by an Amended Petition filed on November 23, 2009 (the Original Petition and amended petition, collectively the "Petition") pursuant to Chapter 205, Hawai'i Revised Statutes ("HRS"), and Chapter 15-15, Hawai'i Administrative Rules ("HAR") to amend the State Land Use District Boundary to reclassify approximately 181.169 acres of land situated at 'O'oma 2nd, North Kona, Island of Hawai'i, State of Hawai'i, identified as Tax Map Key Nos: (3) 7-3-009: 004 (por.) ("Parcel 4"), and (3) 7-3-009: (portion of State Right-of-Way) ("ROW") (collectively, the "Petition Area"), from the State Land Use Conservation District to the State Land Use Urban District to allow for the development of a mixed-use master-planned beachside residential community to be known as

'O'oma Beachside Village (the "Project"). The approximately 302.38 acres of land proposed for the development of the Project consists of the Petition Area and 83 acres located within Tax Map Key No. (3) 7-3-009: 022 ("Parcel 22"), (collectively, the "OBV Site").

The Land Use Commission of the State of Hawai'i (the "Commission"), having heard and examined the testimony, evidence, and arguments of counsel presented during the hearings and the proposed findings of fact, conclusions of law, and decision and orders and subsequent responses filed by the parties herein, and having considered and heard argument of the parties on Petitioner's Motion for Reconsideration, hereby makes the following findings of fact, conclusions of law and decision and order:

FINDINGS OF FACT

1. On April 30, 2007, Petitioner filed the Original Petition and Petitioner's Exhibits 1 to 12.

2. On May 1, 2007, the Commission determined (a) that the Commission is the appropriate accepting authority pursuant to HRS Chapter 343, and (b) that the proposed action may have a significant impact to warrant the preparation of an environmental impact statement ("EIS").

3. On May 2, 2007, by facsimile, the Kaloko-Honokohau National Historical Park ("NPS") submitted its Notice of Intent to Intervene. On May 7, 2007, the Commission received NPS's Notice of Intent to Intervene.

4. On May 23, 2008, notice of Petitioner's Draft EIS was published in *The Environmental Notice*, beginning the 45-day public comment period that concluded on July 7, 2008.

5. Petitioner voluntarily extended the 45-day public comment period for the Draft EIS from July 7, 2008 to September 8, 2008.

6. On December 11, 2008, Petitioner filed its Preliminary Final EIS.

7. On January 5, 2009, the Commission received written correspondence from Janice Palma-Glennie.

8. On January 7, 2009, the Commission received written correspondence via e-mail from R.H. Bennett, PhD., Chairman, Surfrider Foundation; Debbie Hecht; 2% for the Land Fund Coordinator; and Duane D. Erway.

9. On January 8, 2009, the Commission received written testimonies from Virginia Isbell and Geraldine Bell (representing the National Park Service).

10. On January 8, 2009, and by written Order filed on January 27, 2009, the Commission accepted Petitioner's Final EIS ("FEIS").

11. On January 23, 2009, notice of the FEIS was published in *The Environmental Notice* and no appeals to the FEIS were filed.

12. On November 23, 2009, Petitioner filed its Amended Petition and Petitioner's Exhibits 1A, 2A, 2B, 3B, 4A, 5A, 5B, 7A, 8A, 9A, 10A, 11A, 12A, 13 - 17 .

13. On December 8, 2009, the Executive Officer of the Commission notified Petitioner by letter that the Petition was deemed a proper filing and accepted for processing as of December 8, 2009.

14. On December 14, 2009, the Commission received written correspondence from Hawai`i County Councilman, Kelly Greenwell.

15. On December 16, 2009, the Commission received written correspondence from Hawai'i County Councilmember, Brenda J. Ford.

16. On December 29, 2009, the Commission received written review and comments from the State Department of Land and Natural Resources ("DLNR") from Morris Atta.

17. On December 29, 2009, a notice of hearing was published in the Honolulu Star-Bulletin, West Hawai'i Today, The Maui News, Hawai'i Tribune Herald, and The Garden Island.

18. On December 29, 2009, Petitioner filed the Affidavit of Mailing of Notice of Hearing and Exhibits A-C.

19. On December 30, 2009, the State Office of Planning ("OP") filed a request for extension for filing of position statement.

20. On January 4, 2010, Petitioner filed a letter of no objection to OP's request for an extension for filing of Position Statement.

21. On January 5, 2010, the County of Hawai'i Planning Department ("Planning Department") filed its Statement of Position in Support of the Petition.

22. On January 11, 2010, the Commission received written comments from DLNR from Morris Atta.

23. On January 13, 2010, NPS filed its Petition to Intervene.

24. On January 14, 2010, Petitioner filed its First List of Witnesses, First List of Exhibits and Petitioner's Exhibits 18-27.

25. On January 19, 2010, the OP filed its Statement of No Opposition to NPS's Petition to Intervene.

26. On January 20, 2010, Petitioner filed its Memorandum on The National Park Service's Petition to Intervene.

27. On January 21, 2010, the Commission received fax correspondence from Steve and Cheryl Kornberg.

28. On January 22, 2010, a Prehearing Conference was held in Honolulu, to identify the issues and positions of the parties, arrange for the exchange of proposed exhibits and names of witnesses, establish schedules, and such other matters to expedite the orderly conduct and disposition of the hearing. All parties in the proceeding, as well as NPS, were in attendance.

29. On January 25, 2010 and by written Order filed on January 27, 2010, the Commission granted NPS's Petition to Intervene.

30. On January 25, 2010, Planning Department filed its Witness and Exhibit Lists.

31. On January 27, 2010, the Prehearing Order was issued, which required: (a) NPS to file a statement of position on the Petition by February 1, 2010; (b) all parties to file a final list of witnesses and final list of exhibits on February 1, 2010; (c) all parties to file exhibits, memoranda or other documentary information in response or rebuttal by February 12, 2010; and (d) all parties to file written direct testimony of expert witnesses by February 26, 2010.

32. On January 28, 2010, Petitioner filed Affidavit of Publication for Notice of Hearing.

33. On January 28, 2010, OP filed its Position Statement.

34. On February 1, 2010, Petitioner filed Second List of Witnesses; Second List of Exhibits; and Petitioner's Exhibits 28 - 62.

35. On February 1, 2010, NPS filed its Statement of Position; First List of Witnesses; First List of Exhibits; and Exhibits 1-8.

36. On February 2, 2010, OP filed its List of Witnesses; List of Exhibits; Exhibits 4, 10, 12, 13 and 17.

37. On February 3, 2010, the Commission received written correspondence from James Sogi and e-mail from State Senator Josh Green.

38. On February 3, 2010, Petitioner filed its Exhibit 49.

39. On February 4, 2010, the Commission received written correspondence from Helena Inaba and Corey Harden.

40. On February 8, 2010, the Commission received written correspondence from State Senator Josh Green (hardcopy of e-mail received on February 3, 2010).

41. On February 9, 2010, Planning Department filed its testimony in support of the Petition.

42. On February 16, 2010, Petitioner filed its Third List of Witnesses; Third List of Exhibits; and Petitioner's Exhibits 63 – 76.

43. On February 16, 2010, NPS filed its Contingent List of Witnesses; Second List of Exhibits; and Exhibits 9 - 16.

44. On February 16, 2010, OP filed its List of Rebuttal Exhibits; and Exhibits 18 - 20.

45. On February 17, 2010, the Commission received correspondence via e-mail from Randy Botti.

46. On February 26, 2010, the Commission received written correspondence from Jack Kelly (Protect Keopuka 'Ohana); Christina Garcia; Larry and Brenda Ford; Mark Frazer; Kathleen McMillen; and via e-mail from Myles Miyasato.

47. On February 26, 2010, OP filed its Exhibits 2, 5 and 9.

48. On February 26, 2010, Petitioner filed Written Testimony; and its Exhibits 78-80.

49. On March 1, 2010, the Commission received written correspondence from Duane Erway (President, Plan to Protect Kona); Doug Perrine; Allan Onishi (President, Japanese Chamber of Commerce and Industry of Hawai'i); and Corey Harden (Sierra Club, Moku Loa Group).

50. On March 1, 2010, OP filed its First Amended List of Exhibits; and Exhibits 1, 21, 22 and 24 – 26.

51. On March 2, 2010, the Commission received written correspondence from Colleen Sullivan; Ernie Frascati and Karen Brown; Tyler, Nani, Kulani, Kawaihua, and Aukele Paikuli-Campbell; Linda Milburn and John Collins (Aircraft Owners and Pilots Association); Jean Thompson; Leona "Noni" Roberts; Cynthia Hope; Debbie Hecht; Marni Herkes; Virginia Thomas; Robert H. Smith; Kiana; and Trevor Fitzpatrick.

52. On March 2, 2010, Petitioner filed its First Amended List of Exhibits.

53. On March 3, 2010, the Commission opened the hearing on the Petition at the Waikoloa Beach Marriot Resort at Waikoloa, Hawai'i, and heard oral and/or received written public testimony from Stuart Coleman; Surfrider Foundation – Kona Kai Ea Chapter; Members of the 'O'oma Beachside Village Citizen Advisory Group; The Royal Order of Kamehameha I; Steve and Cheryl Kornberg; Jim Rath; Miles Miyasato; Kathy McMillen (maps provided); Duane Erway (Plan to Protect Kona); Gene "Bucky" Leslie; Claire Bajo; David "Bones" Inkster; Virginia Isbell; Rodney Palafox; Diane Ware; Barbara Scott; Karen Eoff; Nita Pilago; Rebecca

Villegos; Tracy Solomon; Robert Freitas, Jr.; Charles Flaherty; Brock Stratton; Jeffrey Middleton; Curtis Muraoka (by Laura Aquino); Cheryl King; John Knoll; Robert Meierdiercks; Marian Wilkins; George Wilkins; Alfredo Martinez; Michael Akau; Keith Johnson; Blake Cullum; Jeff Reiner; Michael Kramer; Rod Hinman; Michael Reimer; Winfield P. Chang; Ronald Mitchell; Daisy Mitchell; Tom Lawson; Diane Ware; Momi Greene; Jim Medeiros; and Ross Wilson.

54. On March 3, 2010, the Commission received written correspondence at its office in Honolulu, Hawai'i, from George, Denice, and Keoki Murphy; Stuart Coleman; Carol Fuller; Charles Flaherty; Rodney Palafox; Diane Ware; and Curtis Muraoka.

55. On March 4, 2010, the Commission received written correspondence from Mandy Johnson Campbell, Steve Dunleavy; Joe Forster; Ivonne Lietz; Bob and Linda Hamilton; Shannon Jacob-Kline; Michelle Feather, Nanoa Dano, and Mahea Dano; Richard Bennett, PhD. (President, Applied Life Sciences); Greg Peterson; Chad Campbell; Rebecca Villegas; David Blehart and family; Jesse K. Logan; 'Ohana Mail; and Simmy McMichael.

56. On March 17, 2010, the Commission received written correspondence via e-mail from Faye Daniel.

57. On April 29, 2010, OP filed its Second List of Exhibits; and Exhibits 3, 5A, 8, 23, 27 and 28.

58. On May 3, 2010, the Commission received written correspondence from Lorraine Kohn.

59. On May 3, 2010, Petitioner filed its Fourth List of Exhibits; and Petitioner's Exhibits 81 – 95.

60. From May 4 through June 15th, the Commission received written correspondence via e-mail from the following: Kitty Lyons; John Simmerman (Kona Kai Ea Chapter of the Surfrider Foundation); Thalia Davis; Chama Cascade; Marya Mann; Stuart Coleman, the Hawai'i Coordinator of the Surfrider Foundation; Phyllis Hanson; Donald O'Reilly; Ed Fernandez; Ann Goody; Cory Harden; Michael Reimer; Kathy McMillen; and Matt Binder.

61. On May 5, 2010, the Commission continued the hearing on the Petition at King Kamehameha's Kona Beach Hotel in Kailua-Kona, Hawai'i, and heard oral and/or received written public testimony from Rick Vidgen; Gene "Bucky" Leslie; G. Griffith; Glennon T. Gingo; R. Tyler Paikuli-Campbell; Bonnie L. Tones; Captain Nancy W. Sweatt; Ruth Aloua; Tracy Solomon; Shianne Moniz-Metcalf; Gabby Waite; Megan Kaipo; Apua Hubner/for Tyler Campbell; Michael Tomas; Rebecca Villegas; Calvin Dawn; Ocean Donaldson-Sargis; Krista Donaldson; Judy Taggerty; Danielle Taggerty-Onaga; Dorothy Weber; Claire Inman; Frank DeYoung; Esta Marshall; Curtis Muraoka; Glennon Gingo; Marni Herkes; Jesse Hughes; Diane Cochran; Cheryl Kornberg; Akahai Keana'aina; Russ H. Robinson; Nate Clark; Flaunn Elder-Jamieson;Jess, Misty & baby Kaninau Alii Lambeth; James Dickson; Vivian Landrum; Honokanai'a Huebner; Chris Krueger; David Hickey; Larry Ford; Troy Solomon; Janice Palma Glennie; Shannon Rudolf; Michelle Tomas; George Wilkins; Miriam Wilkins; Theodore Leaf; Barbara Scott; Tom Lawson; Kathy McMullen; Debbie Hunt; Robert Freitas, Jr.; Jeffrey Middleton; Sammie Stanbro; Winfield Chang; Simmy McMichael; Laura Aquino for Jackie Hoover; and Ross Wilson for Fritz Glade.

62. On May 6, 2010, the Commission conducted a site visit of the Petition Area.

63. On May 10, 2010, the Commission received written correspondence from Marie Aguilar and via e-mail from Philip Mosher.

64. On May 11, 2010, the Commission received written correspondence from Lily Anne Souza.

65. On May 30, 2010, the Commission received a copy of an e-mail from Janice Palma-Glennie regarding a completed Open Space Survey form in support of relisting of 'O'oma to the Top 10 of the county's land acquisition list, completed jointly by Kohanaiki 'Ohana and the Surfrider Kona Kai Ea Chapter.

66. On June 14, 2010, NPS filed its Third List of Exhibits (as revised) and Exhibit 31.

67. On June 14, 2010, OP filed its First Amended List of Witnesses; Third Amended List of Exhibits; and Exhibits 29 - 30.

68. On June 16, 2010, the Commission received written correspondence from Mr. George A. Wilkins, a Kona resident.

69. On June 16, 2010, Planning Department filed its Attachment 1 (Kona CDP Figure 4-7).

70. On June 17, 2010, the Commission continued the hearing on the Petition at King Kamehameha's Kona Beach Hotel in Kailua-Kona, Hawai'i, and heard oral and/or received

written public testimony from Burke Matsuyama; Marie Aguilar; Ruth Aloua; David "Bones" Inkster; Marian Wilkins; George Wilkins; Mark Travalino; Michelle Tomas; Robert Frettas; Jeff Middleton; Wayne Mahi; Kathleen McMillen; Ulrich Bonne; David Carlson; Winfield Chang; Roy Beckland; Cheryl King; Charles Flaherty; Claire Bajo; Shannon Rudolph;Dr. Theodore Leaf; Melvin Mason, Jr.; Solomon K. Akau; Nova Lee; and John Hatchie.

71. On June 17, 2010, the Commission received written correspondence at its office in Honolulu, Hawai'i, from Jim Wiese; Mark Van Doren; and David Inkster.

72. On July 8, 2010, the Commission received written correspondence from Doug Perrine; Gemma Ley; and Kathy McMillen.

73. On July 9, 2010, OP filed its Exhibit 9A.

74. On July 12, 2010, Petitioner filed its Rebuttal (Fifth) List of Exhibits; and Petitioner's Exhibit 96.

75. On July 12, 2010, the Commission received written correspondence from George, Denise and Keoki Murphy.

76. On July 13, 2010, the Commission received written correspondence from Faye Daniel.

77. On July 14, 2010, the Commission received written correspondence via e-mail from Mike Reimer.

78. On July 14, 2010, OP filed its Fourth List of Exhibits; and Exhibit 31.

79. On July 15, 2010, the Commission continued the hearing on the Petition at King Kamehameha's Kona Beach Hotel in Kailua-Kona, Hawai'i, and heard oral and/or received written public testimony from Marie Aguilar and Philip Mosher; Jing Jing Tsong; Tom Lamont; Greg Trebon; Mary Jo Lake; Stefan Buchta; Ben Dysart; Pete Lindsey; Jonathan Lee; Diane Corcoran; Curtis Muraoka; Janice Palma-Glennie; Malia Chaul; Kathleen McMillen; Shannon Jacob Kline; Chac Robbins; April Sutton; Cheryl Kornberg; Shannon Rudolph; John Funk, Jr.; Sandor Baranil; Curtis Crabb; David Carlson; Winfield Chang; Mark Travalino; Kawika Marquez; Charles Flaherty; Toni Owen; Karen Eoff; Glennon Gingo; Ron Mitchell; and Hannah Kihalani Springer.

80. The Commission held evidentiary hearings in this Docket on March 3-4, May 5, June 16-17, and July 15, 2010.

81. On July 15, 2010, the Commission closed the evidentiary portion of the proceedings.

82. On August 17, 2010, the NPS filed its Proposed Findings of Fact, Conclusions of Law, and Decision and Order.

83. On August 18, 2010, the Planning Department filed a Request for a One-day Extension of Filing of Proposed Findings of Fact, Conclusions of Law and Decision and Order to August 24, 2010.

84. On August 24, 2010, OP filed a Request for a Two-day Extension of Filing of Proposed Findings of Fact, Conclusions of Law and Decision and Order to August 26, 2010.

85. On August 26, 2010, Petitioner filed its Proposed Findings of Fact, Conclusions of Law, and Decision and Order.

86. On August 26, 2010, the Planning Department filed electronically its Joinder in Petitioner's Proposed Findings of Fact, Conclusions of Law, and Decision and Order.

87. On August 26, 2010, OP filed its Proposed Findings of Fact, Conclusions of Law, and Decision and Order.

88. On September 1, 2010, the Planning Department filed its Joinder in Petitioner's Proposed Findings of Fact, Conclusions of Law, and Decision and Order.

89. On September 2, 2010, the Commission received written correspondence from Office of Hawaiian Affairs (OHA), Kama Hopkins, Trustee Aide and Robert K. Lindsey, Jr., Trustee.

90. On September 8, 2010, Planning Department filed its Statement of No Position to NPS's Proposed Findings of Fact, Conclusions of Law, and Decision and Order and its Statement of No Position to OP's Proposed Findings of Fact, Conclusions of Law, and Decision and Order.

91. On September 9, 2010, NPS filed its Response to Petitioner's and County of Hawaii's Proposed Findings of Fact, Conclusions of Law, and Decision and Order.

92. On September 10, 2010, Petitioner filed its Objections to National Park Services's Proposed Findings of Fact, Conclusions of Law, and Decision and Order Filed on August 17, 2010.

93. On September 10, 2010, Petitioner filed its Objections to OP's Proposed Findings of Facts, Conclusions of Law and Decision and Order.

94. On September 10, 2010, OP filed its Objections to Petitioner's Proposed Findings of Fact, Conclusions of Law, and Decision and Order.

95. On September 10, 2010, NPS and OP filed their Joint Response to the Other Party's Proposed Findings of Fact, Conclusions of Law, and Decision and Order.

96. On September 15, 2010, Petitioner filed its Objections to NPS's Proposed Findings of Fact, Conclusions of Law, and Decision and Order.

97. On September 20, 2010, Petitioner filed its Response to NPS's and OP's Joint Response to the Other Party's Proposed Findings of Fact, Conclusions of Law, and Decision and Order.

98. On September 20, 2010, Petitioner filed its Response to National Park Services's Proposed Findings of Fact, Conclusions of Law, and Decision and Order.

99. On September 20, 2010, Petitioner filed its Response to OP's Objections to Petitioner's Proposed Findings of Fact, Conclusions of Law, and Decision and Order.

100. On September 20, 2010, NPS filed its Reply to Petitioner's Objections to Intervenor's Proposed Findings of Fact, Conclusions of Law, and Decision and Order.

101. On September 20, 2010, OP filed its Response to Petitioner's Objections to Office of Planning's Proposed Findings of Fact, Conclusions of Law, and Decision and Order.

102. On September 21, 2010, Petitioner filed Motion to Change Petitioner's Name and Amend Caption.

103. On September 22, 2010, the Commission received written correspondence via e-mail from Janice Palma-Glennie.

104. On September 30, 2010, the Commission received written correspondence via e-mail from King's Trail Rides; Margaret Wille; Janice Palma-Glennie (Moku Loa Group of the Sierra Club); Leona "Nani" Roberts; George Wilkins; Diane Corcoran; Karen Eoff (Kohanaiki 'Ohana); and Howard M. Blackson, III.

105. On October 1, 2010, the Commission received written correspondence via e-mail from Robert and Karen Guerreiro; and Likeke Ric Bumanglag.

106. On October 4, 2010, the Commission received written correspondence via e-mail from Janice Palma-Glennie; Jay and Phyllis Hanson; Kevin O`Connor; and Zana Sparks.

107. On October 5, 2010, the Commission received written correspondence via e-mail from Debra Ann First; Richard Campbell; Margie Koldinger; Russell Nahl; and Beth Anne Webb.

108. On October 6, 2010, the Commission received written correspondence via e-mail from Duane and Marjorie Erway; Waldeen Ozawa-Hay; Hannah Springer; Leonard Johnson; Jenny Wheeler; Allison Castro; Mouna Ghoussoub; and Janice Palma-Glennie (for Surfrider Foundation – Kona Kai Ea Chapter).

109. On October 7, 2010, at the Waikoloa Beach Marriott Resort at Waikoloa, Hawai'i, and by written Order issued October 19, 2010, the Commission granted Petitioner's Motion to Change Petitioner's Name and Amend Caption. In addition, the Commission heard oral arguments from the parties on the Petition and heard oral and/or received written public testimony from Keao Simeona; Adam Jardine; Mana Simeona; Allison Castro; Tim Hershman; Subhadra Corcoran; George Wilkins; Kama Hopkins (for Trustee Robert Lindsey); Michelle Tomas; Winfield Chang; Robert Freitas, Jr.; David Carlson; Shaianne Moniz-Metcalf; Gabby Waite; Megan Kaipo; Janice Palma-Glennie (For Nancy Pisicchio); Shannon Rudolph; Gemma Ley; Cindy Evans; Judy Lane; Ron Mitchell; Malu Simeona; Surfrider Foundation, Kona Kai Ea Chapter; and Daisy Mitchell.

110. On November 1, 2010, the Commission received written correspondence via e-mail from Shane Peters (VP-Communications Pacific on behalf of Hawai`i Developers Council); James Sogi; Rickie Buher; Colleen Sullivan; Michael Reimer; Cory Harden; Shannon Rudolph; and Mark Nelson Frazer.

111. On November 5, 2010, at King Kamehameha's Kona Beach Hotel in Kailua-Kona, Hawai'i, the Commission conducted deliberations on the Petition and heard oral and/or received written public testimony from Al Lardizabel; Mark Travalino; Brenda Ford; Janice Palma-Glennie; Marni Herkes; Cynthia Hope; Michelle Tomas; Diane Corcoran; Sammie Stanbro; Chuck Flaherty; Shannon Rudolph; Glennon Gingo; Angel K. Pilago; Winfield Chang; Karri Teshima; Rebecca Villegas; Joy Mills; and Misti Lambeth.

112. During deliberations, several Commissioners expressed concerns about traffic mitigation, public access to the shoreline, adverse impacts on Kona International Airport and consequences of allowing an urban area in close proximity to it, preservation of the Conservation designation, and adequate and meaningful mitigation of the concerns of the public.

113. At its meeting on November 5, 2010, a motion was made and seconded to grant the Petition in part and to deny the Petition in part. The portion of the Petition Area that would be denied reclassification to the Urban district and remain in the Conservation district would be that portion of the Petition Area from 1100 feet mauka of the shoreline to the shoreline. The motion failed to receive six affirmative votes.

114. At its meeting on November 5, 2010, a motion was made and seconded to deny the Petition in its entirety. The motion received five affirmative votes and four nay votes. Although the motion to deny passed, Petitioner indicated that it believed the motion failed because it did not receive six affirmative votes. Attorneys for OP and Planning Department suggested that the Commission entertain a motion to approve the Petition to avoid procedural issues.

115. Subsequently, at its meeting on November 5, 2010, a motion was made and seconded to grant the Petition in its entirety. The motion received four affirmative votes and five nay votes, and therefore failed.

116. On November 22, 2010, the Land Use Commission ("LUC") issued its Findings of Fact, Conclusions of Law, and Decision and Order denying Petitioner's request for a State Land Use District Boundary Amendment.

117. On November 22, 2010, Petitioner filed its Motion for Reconsideration of Findings of Fact, Conclusions of Law and Decision and Order Issued November 22, 2010; Motion to Extend Time; Motion to Reopen Hearing;.

118. On November 30, 2010, OP filed its Response to Petitioner's Motion for Reconsideration.

119. On November 30, 2010, NPS filed its Response to Petitioner's Motion for Reconsideration.

120. On November 30, 2010, the Commission received e-mail correspondence from the following individuals: Anika Glass; Matt Thoman; Simmy McMichael; Paulette McNerney; Randall J. Ciriako; Alicia Morrier; David Blehert, Deborah Koehn, and Alison Teal Blehert-Koehn; Rich Tucciarone; Deborah J. Ward; Rozemaryn van der Horst; Matt Binder; Bob Sterne; Leah Winkler; Kelley K. Asbell; Thomas Carey; Debera Elkahana First; Lynn Beittel; and Merry Anne Stone.

121. On December 1, 2010, the Commission received e-mail correspondence from the following individuals: Susan Dursin; Charles Flaherty; Cheryl King; Stephen D. Lopez; Cory Harden; Marjorie Erway; Janice Palma-Glennie (for Surfrider Foundation's Kona Kai Ea Chapter); Diane Aoki; Benjamin Marantz; P. Ka`anohi Kaleikini; George and Marian Wilkins; Marshall Blann; Jon Miyata (for Hawai`i Island Chamber of Commerce); Megan Kaipo; and S. Metcaf.

122. On December 1, 2010, the Planning Department filed its Statement of No Position to Petitioner's Motion for Reconsideration.

123. On December 2, 2010, the Commission conducted a meeting in Honolulu, Hawai`i to consider Petitioner's Motion for Reconsideration. In attendance were Petitioner, the Planning Department, OP, and NPS.

124. On December 2, 2010, at the State Office Tower in Honolulu, Hawai'i, the Commission heard oral and/or received written public testimony from Michelle K. Tomas; Robert Harris (Sierra Club); and Stuart Coleman (Surfrider Foundation).

125. At its meeting on December 2, 2010, after deliberation by the Commissioners, a motion was made and seconded to grant in part and deny in part the Motion for Reconsideration limited to supplementing the findings of fact and conclusions of law; to deny the Motion to Extend Time and to deny the Motion to Reopen the hearing. There being a vote tally of 6 ayes, 1 nays, and 2 excused, the motion carried.

126. As noted in Finding of Fact 112, Commissioners expressed concerns about traffic mitigation, public access to the shoreline, adverse impacts on Kona International Airport and consequences of allowing an urban area in close proximity to it, preservation of the Conservation designation, and adequate and meaningful mitigation of the concerns of the public.

127. With respect to the Kona International Airport ("KOA"):

a. The proposed Project would be located within one-half mile of the airport.

b. KOA is a major State investment of critical importance to West Hawai`i. It was built at Keāhole Point because of the relative isolation of the area. The airport was moved to Keāhole Point because development around the old Kona Airport limited its effectiveness.

c. Urban development near and around KOA may limit its effectiveness.

d. There will continue to be growing demands on KOA, including increase in passenger and cargo flights, which will likely include more night flights.

e. Increased airport operations may ultimately lead to complaints and lawsuits concerning aircraft overflights, safety, and noise. This may have adverse impacts on airport operations that could affect service to West Hawai`i.

f. Petitioner represents that it would provide sound attenuation measures for residential units impacted by the 55 Ldn or greater contour lines. Certain sound attenuation measures may not be effective since Hawaii's lifestyle encourages open windows and outdoor living.

g. Petitioner has agreed to an avigation easement with the DOT. An avigation easement would grant the right to fly over the Petition Area including the ability to make noise, discharge smoke fumes, oil particles, anything associated with the flight of aircraft over the Petition Area.

h. According to FAA guidelines, general land use categories such as "Residential," "Public Use," "Commercial Use," "Manufacturing and Production," and "Recreational" uses are compatible without restriction for areas below the 65 Ldn contour. However, FAA states that the responsibility for determining the acceptable and permissible land uses and the relationship between specific properties and specific noise contours rests with local authorities.

i. Military aircraft do not have noise restrictions as civilian and commercial aircraft do. The military uses KOA.

j. OP proposed a condition notifying purchasers of noise and other problems resulting from the proximity of KOA and waiving the right to sue.

k. Although avigation easements and conditions such as proposed by OP provide some protection to the State, they will not completely prevent complaints and lawsuits, and there is no assurance of the outcome of any such lawsuits.

l. There is always a risk of future complaints about aircraft noise, whether one lives inside the 55 DNL or outside the 55 DNL.

128. With respect to the Conservation District:

a. The Petition Area includes lands that are necessary for the conservation, preservation, and enhancement of archaeological, historical, and cultural sites; therefore, it is appropriate for those areas to remain designated within the State Land Use Conservation District.

b. The Petition Area is wholly within the State Conservation District. Reclassification of the Petition Area would not be in conformance with the current Conservation District designation. Retaining the Petition Area in Conservation District at this time is appropriate to: protect coastal waters that are designated class "AA"; for conservation of wilderness areas and for aesthetic enjoyment. The Petition Area currently meets the standards applicable in establishing boundaries of the Conservation District as set forth in HAR Section 15-15-20 as follows:

i) HAR Section 15-15-20(1) "lands necessary for protecting watersheds, water resources, and water supplies";

ii) HAR Section 15-15-20(4) "...lands necessary for the conservation, preservation, and enhancement of scenic, cultural, historic, or archaeological sites and sites of unique physiographic or ecologic significance"; and

iii) HAR Section 15-15-20(6) "...lands having an elevation below the shoreline as stated by section 205A-1, HRS, marine waters, fish ponds, and tidepools of the State..."

c. The coastal waters in this region of West Hawai`i, including the Petition Area and National Park, are classified as Class AA by the State Department of Health. The objective of the Class AA designation is to ensure that "these waters remain in their natural pristine state as nearly as possible with an absolute minimum of pollution or alteration of water quality from any human-caused source or actions."

d. Water quality and quantity are critical to the integrity and health of the natural and cultural resources at the Petition Area, in the ocean, and at NPS.

e. The coastal and marine resources along the entire Kona coast are a great economic asset for Hawai`i. Whether stemming from tourism or other commercial activities such as fishing, the marine resources provide significant economic value to the local community in a variety of ways.

129. With respect to public access:

a. Petitioner recognizes that people frequent the shoreline fronting the Petition Area. While Petitioner represented that it would provide public access to the shoreline, it has no definite plans. It could provide access through the Petition Area or it could provide access using a road owned by Kohanaiki, although Petitioner presently has no agreement with Kohanaiki to do so.

b. Throughout the proceedings numerous public testifiers expressed strong concerns about the quality of the proposed public access and the negative impacts to the quality of future use of the wild coastline and beach area with the close proximity of the proposed Project.

130. With respect to traffic mitigation:

a. A road, parallel to and makai of Queen Ka`ahumanu Highway would need to be constructed through the Project to provide access to Queen Ka`ahumanu Highway north and south of the Petition Area via a right-turn in/right-turn out roadway ("RIRO"). The State of Hawai`i Department of Transportation ("DOT") has the discretion to close the RIRO once the Project has access from either a northern or southern fully channelized intersection. Construction of this road is dependent upon multiple landowners agreeing on cost-sharing for the road.

b. Long range transportation plans identify Queen Ka`ahumanu Highway as a full access-controlled facility with grade-separated interchanges. The phased upgrade of Queen Ka`ahumanu Highway and development of other supporting transportation infrastructure

may result in the restriction or elimination of direct connection from the Project to Queen Ka`ahumanu Highway.

131. With respect to the concerns of the public:

a. Throughout the proceedings there was substantial and on-going public testimony that illustrated that the concerns of the public regarding this Project had not been adequately addressed or mitigated.

b. For example, at the Commission's November 5, 2010 meeting on this Docket, one public witness summarized the community's concerns, as follows:

> "...Yet despite testimony to the contrary by Petitioners and the development community there's still no solid proof that the reclassification of `O`oma is necessary, timely, justified or even safe. Unrelenting public support for `O`oma's conservation protection proves that there can be no realistic claims that reclassification would serve the public's best interest.
>
> And no claim can be made that the owners of the property have entitlements or legal justification for demanding other than what they're allowed to use the property as they purchased it, in the ways that conservation classification allows.
>
> In fact Commissioners have even more reasons to uphold past `O`oma reclassification denials than they did in the earlier 1990's.
>
> Those reasons include limiting traditional public shoreline access, economic non-viability, threats to the public safety, financial threat to government taxpayers and homeowners due to allowing urban development to be built next to

an expanding airport, compromise the public trust resources, lack of definitively identified potable water sources and wastewater treatment, willful ignorance of county planning laws."

RULING ON PROPOSED FINDINGS OF FACT

Any of the proposed findings of fact submitted by Petitioner or any other party not already ruled upon by the Commission by adoption, or rejected by clearly contrary findings of fact, are hereby denied and rejected.

Any conclusions of law improperly designated as a finding of fact should be deemed or construed as a conclusion of law; any finding of fact improperly designated as a conclusion of law should be deemed or construed as a finding of fact.

CONCLUSIONS OF LAW

1. Pursuant to HRS Section 205-1, and HAR Chapter 15-15, six affirmative votes are necessary for any land use district boundary amendment.

2. Pursuant to HAR Section 15-15-13(b), if the Commission's action on a petition for boundary amendment fails to obtain six affirmative votes, findings of fact, conclusions of law, and decision and order denying the petition shall be filed by the Commission.

3. The motion to approve the boundary amendment failed to obtain six affirmative votes. Petitioner failed to carry its burden to show by a clear preponderance of the evidence that the land use district boundary amendment satisfies the Commission's decision-making criteria and should be approved.

4, Pursuant to Chapter 205, HRS, and the Hawai`i Land Use Commission Rules under Chapter 15-15, HAR, and upon consideration of the Land Use Commission decision-

making criteria under Section 205-17, HRS, and because the Petition did not receive six affirmative votes, this Commission finds that the credible evidence does not establish by a clear preponderance of the evidence that the reclassification of the Petition Area, consisting of approximately 181.169 acres of land situate at 'O'oma 2nd, North Kona, Island and County of Hawai`i, State of Hawai`i, and further identified as Tax Map Key Nos: (3) 7-3-009: 004 (por.), and (3) 7-3-009: (portion of State Right-of-Way), from the State Land Use Conservation District to the State Land Use Urban District for development of the Project as a mixed use master planned beachside residential community, conforms to the standards for establishing the Urban District boundaries, is reasonable, is not violative of Section 205-2, HRS, and is consistent with the Hawai`i State Plan as set forth in chapter 226, HRS, and with the policies and criteria established pursuant to Sections 205-17 and 205A-2, HRS.

5. Article XI, Section 1, of the Hawai`i Constitution requires the State to conserve and protect Hawai`i's natural beauty and all natural resources, including land, water, air, minerals, and energy sources, and to promote the development and utilization of these resources in a manner consistent with their conservation and in furtherance of the self-sufficiency of the State.

6. The Petition Area includes lands necessary for the conservation, preservation, and enhancement of significant archaeological, historical, and cultural sites, and therefore it meets the standards for determining the boundaries of the State Land Use Conservation District in accordance with HRS Section 205-2(e), and HAR Section 15-15-20.

7. Article XI, Section 7, of the Hawai`i Constitution states that the State has an obligation to protect the use of Hawai`i's water resources for the benefit of its people.

DECISION AND ORDER

Based upon the findings of fact and conclusions of law stated herein, and the failure of the Petition for reclassification to receive six affirmative votes, it is hereby determined that the reclassification of the Petition Area is DENIED, and that the Petition Area, being the subject of the Petition in Docket No. A07-774 filed by 'O'oma Beachside Village, LLC, consisting of approximately 181.169 acres of land in the State Land Use Conservation District situated at 'O'oma 2nd, North Kona, Island and County of Hawai'i, State of Hawai'i, and further identified as Tax Map Key Nos: (3) 7-3-009: 004 (por.), and (3) 7-3-009: (portion of State Right-of-Way) shall remain within the State Land Use Conservation District.

This Supplemental Findings of Fact, Conclusions of Law, and Decision and Order supersedes the Commission's Findings of Fact, Conclusions of Law and Decision and Order filed in this Docket on November 22, 2010.

ADOPTION OF ORDER

This ORDER is hereby adopted and approved this 3rd day of December, 2010. This ORDER and its ADOPTION shall take affect upon the date this ORDER is certified and filed by this Commission.

Done at Honolulu, Hawai'i, this 3rd day of December, 2010, per motion on December 3, 2010.

APPROVED AS TO FORM

Deputy Attorney General

LAND USE COMMISSION

STATE OF HAWAI'I

By
VLADIMIR P. DEVENS
Chair

Filed and effective on:

December 3rd, 2010

Certified by:

ORLANDO DAVIDSON
Executive Officer

BEFORE THE LAND USE COMMISSION

OF THE STATE OF HAWAI`I

In The Matter Of The Petition Of	)	DOCKET NO. A07-774
	)	
`O`OMA BEACHSIDE VILLAGE, LLC	)	CERTIFICATE OF SERVICE
	)	
	)	
To Amend the Conservation Land Use District Boundary into the Urban Land Use District for approximately 181.169 acres at `O`oma 2nd, North Kona, Island of Hawai`i, State of Hawai`i; Tax Map Key Nos. (3) 7-3-009: 004 (por.), and (3) 7-3-009: (portion of State Right-of-Way)	)	

CERTIFICATE OF SERVICE

I hereby certify that a copy of the Supplemental Findings of Fact, Conclusions of Law and Decision and Order was served upon the following by either hand delivery or depositing the same in the U. S. Postal Service by regular or certified mail as noted:

	HAND DELIVERED	REGULAR MAIL	CERTIFIED MAIL
ABBEY SETH MAYER, DIRECTOR Office of Planning 235 S. Beretania Street Rm. 600 Honolulu, Hawai`i 96813	X		

	HAND DELIVERED	REGULAR MAIL	CERTIFIED MAIL
BRYAN YEE, ESQ. Deputy Attorney General Hale Auhau, Third Floor 425 Queen Street Honolulu, Hawai`i 96813	X		
CARLSMITH BALL LLP JENNIFER A. BENCK, ESQ. STEVEN S.C. LIM, ESQ. 121 Waiānuenue Avenue Hilo, Hawai`i 96720			X
BOBBY JEAN LEITHEAD-TODD Hawai`i County Planning Department 101 Pauahi Street Hilo, Hawai`i 96720		X	
LINCOLN ASHIDA, ESQ. WILIAM BRILHANTE, ESQ. Corporation Counsel County of Hawai`i 101 Aupuni Street, Suite 325 Hilo, Hawai`i 96720-4262			X
KATHY BILLINGS, Superintendant Kaloko-Honokōhau National Historic Park 73-4786 Kanalani Street, Suite 14 Kailua-Kona, Hawai`i 96740		X	
GREG LIND, ESQ. US Department of Interior 1111 Jackson Street, Suite 735 Oakland, CA 94607			X

Honolulu, Hawai`i, December 3, 2010.

ORLANDO DAVIDSON
Executive Officer