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	)	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)	)	
	)	

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.

November 22, 2010 by

Executive Officer

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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, 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.

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 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.

DECISION AND ORDER

Based upon the findings of fact and conclusions of law stated herein, 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.

Done at Kona, Hawai'i, this 17th day of November, 2010, per motions on November 5, 2010 and November 17, 2010.

APPROVED AS TO FORM

Deputy Attorney General

LAND USE COMMISSION

STATE OF HAWAI'I

By
VLADIMIR P. DEVENS
Chair

Filed and effective on:

November 22, 2010

Certified by:

ORLANDO DAVIDSON
Executive Officer

BEFORE THE LAND USE COMMISSION

OF THE STATE OF HAWAI`I

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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 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		
BRYAN YEE, ESQ. Deputy Attorney General Hale Auhau, Third Floor 425 Queen Street Honolulu, Hawai`i 96813	X		

	HAND DELIVERED	REGULAR MAIL	CERTIFIED MAIL
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. GERALD TAKASE, 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

Kona, Hawai`i, November 17, 2010.

ORLANDO DAVIDSON

Executive Officer