

Petitioner's Exhibit 1

**Certificate of Name Change
(Clifto's Kona Coast LLC to North Kona
Village, LLC)**

SECRETARY OF STATE



FILED 07/01/2005 2:08 PM
Business Registration Division
DEPT. OF COMMERCE AND
CONSUMER AFFAIRS
State of Hawaii

CERTIFICATE OF NAME CHANGE

I, DEAN HELLER, the duly qualified and elected Nevada Secretary of State, do hereby certify that on JUNE 10, 2005, a Certificate of Amendment to its Articles of Organization changing the name to NORTH KONA VILLAGE LLC, was filed in this office by CLIFTO'S KONA COAST 7574C6 LLC. Said change of name has been made in accordance with the laws of the State of Nevada and that said Certificate of Amendment is now on file and of record in this office.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed the Great Seal of State, at my office on July 1, 2005.

Handwritten signature of Dean Heller in cursive.

DEAN HELLER
Secretary of State

By

Handwritten signature of the Certification Clerk in cursive.
Certification Clerk

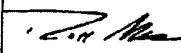
07/01/2005 2:08 PM

Petitioner's Exhibit 1A

**Certificate of Name Change
(North Kona Village, LLC to O'oma
Beachside Village, LLC)**



ROSS MILLER
 Secretary of State
 204 North Carson Street, Ste 1
 Carson City, Nevada 89701-4299
 (775) 684 5708
 Website: secretaryofstate.biz

Filed in the office of 	Document Number 20070702053-76
Ross Miller Secretary of State State of Nevada	Filing Date and Time 10/15/2007 4:09 PM
	Entity Number LLC1763-2000

**Amendment to
 Articles of Organization**
 (PURSUANT TO NRS 86.221)

USE BLACK INK ONLY - DO NOT HIGHLIGHT

ABOVE SPACE IS FOR OFFICE USE ONLY

Certificate of Amendment to Articles of Organization
For a Nevada Limited-Liability Company
 (Pursuant to NRS 86.221)

1. Name of limited-liability company:

North Kona Village LLC


2. The company is managed by: Managers **OR** Members
(check only one box)

3. The articles have been amended as follows (provide articles numbers, if available)*:

Amending company name from:
 North Kona Village LLC

New name:
 O'oma Beachside Village, LLC

4. Signature (must be signed by at least one manager or by a managing member):



 Signature

* 1) If amending company name, it must contain the words "Limited-Liability Company," "Limited Company," or "Limited," or the abbreviations "Ltd.," "L.L.C.," or "L.C.," "LLC" or "LC." The word "Company" may be abbreviated as "Co."
 2) If adding managers, provide names and addresses.

FILING FEE: \$175.00

IMPORTANT: Failure to include any of the above information and submit the proper fees may cause this filing to be rejected.

This form must be accompanied by appropriate fees

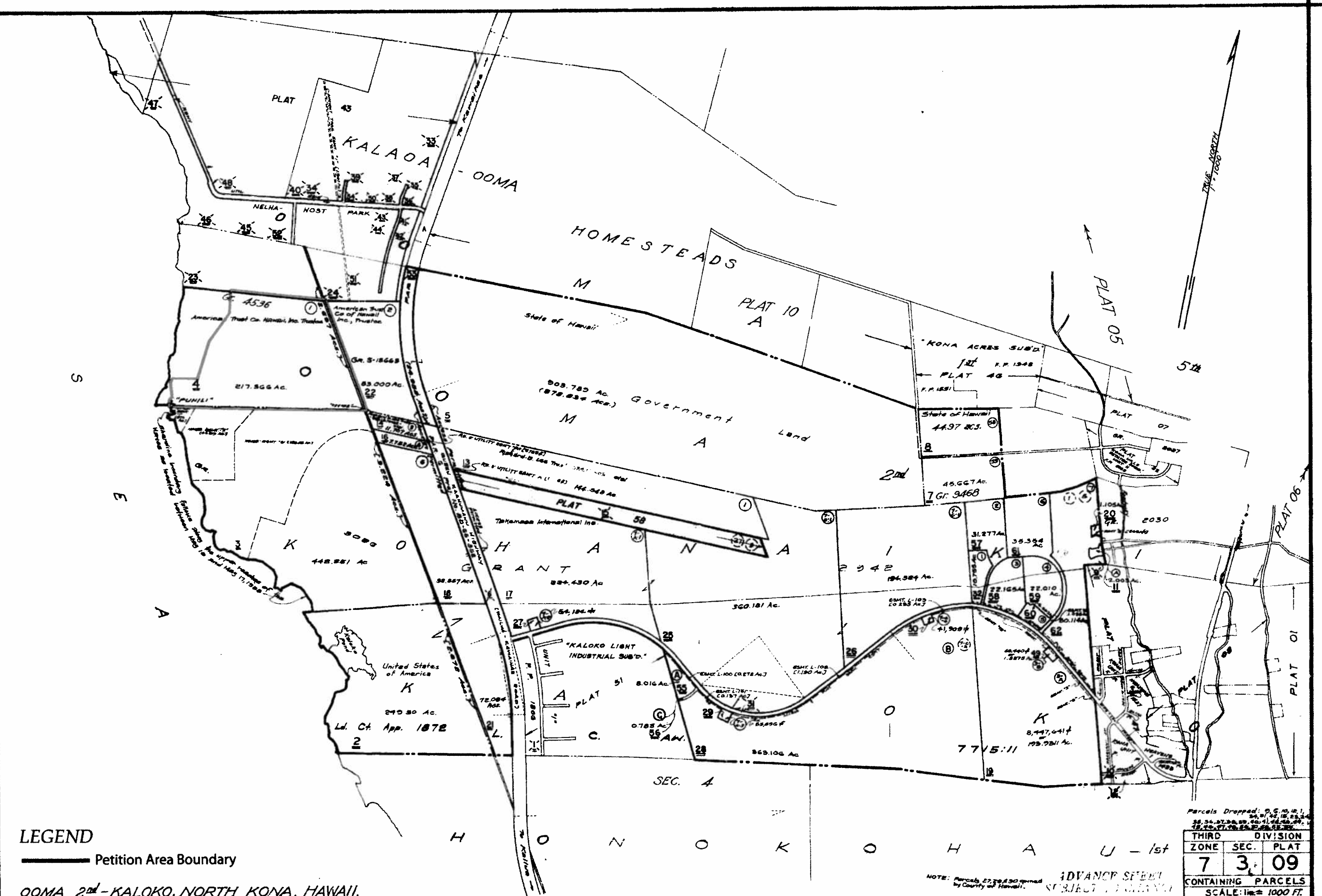
Nevada Secretary of State AM 88.221 Amend 2007
 Revised on: 01/01/07

Petitioner's Exhibit 2B

11" x 17" Map

Dwg. No. 2622
 Source Tax Maps Bureau of Survey
 By I.K.H. & S.L.C. February, 1936.

JAN 1 1936
 MAY 7 1936
 MAY 10 1936
 AUG 2 1936
 DEC 11 1936
 JAN 12 1937
 OCT 2 1937
 JUL 8 1937
 APR 18 1937
 DEC 5 1937



LEGEND

— Petition Area Boundary

OOMA 2nd - KALOKO, NORTH KONA, HAWAII.

Parcels Dropped: 5, 6, 10, 11, 12, 13, 14, 15, 16, 17, 18, 19, 20, 21, 22, 23, 24, 25, 26, 27, 28, 29, 30, 31, 32, 33, 34, 35, 36, 37, 38, 39, 40, 41, 42, 43, 44, 45, 46, 47, 48, 49, 50, 51, 52, 53, 54, 55, 56, 57, 58, 59, 60, 61, 62, 63, 64, 65, 66, 67, 68, 69, 70, 71, 72, 73, 74, 75, 76, 77, 78, 79, 80, 81, 82, 83, 84, 85, 86, 87, 88, 89, 90, 91, 92, 93, 94, 95, 96, 97, 98, 99, 100.

THIRD DIVISION		
ZONE	SEC.	PLAT
7	3	09

CONTAINING PARCELS
SCALE: 1" = 1000 FT.

NOTE: Parcels 27, 28 & 30 owned by County of Hawaii.

PRINTED

Petitioner's Exhibit 3A

**Final Environmental Impact Statement
(See Volumes 1 and 2)**

Petitioner's Exhibit 4A

Metes and Bounds Description of the Petition Area

LEGAL DESCRIPTION

PETITION AREA

All of that certain parcel of land, being a portion of Grant 4536 to John A. Maguire, situated at O'oma 2nd, North Kona, Island of Hawaii, State of Hawaii, described as follows:

Beginning at the Northeast corner of this parcel of land and on the Southwest side of King's Highway, the coordinates of said point of beginning referred to Government Survey Triangulation Station "Akahipuu" being 15,474.96 feet South and 23,940.04 feet West, thence running by azimuths measured clockwise from true South:

- | | | | |
|-----|---------------|--------------|---|
| 1. | 328° 31' 32" | 2636.08 feet | along the southwest side of King's Highway; |
| 2. | 79° 43' 42.4" | 4339.85 feet | along Grant 3086 to Kepena; |
| 3. | 186° 44' 44" | 36.38 feet | along the remainder of Grant 4536 to John A. Maguire; |
| 4. | 145° 49' 17" | 27.58 feet | along the remainder of Grant 4536 to John A. Maguire; |
| 5. | 185° 10' 11" | 24.02 feet | along the remainder of Grant 4536 to John A. Maguire; |
| 6. | 201° 56' 21" | 116.04 feet | along the remainder of Grant 4536 to John A. Maguire; |
| 7. | 162° 41' 56" | 320.26 feet | along the remainder of Grant 4536 to John A. Maguire; |
| 8. | 184° 53' 57" | 76.94 feet | along the remainder of Grant 4536 to John A. Maguire; |
| 9. | 173° 52' 30" | 26.63 feet | along the remainder of Grant 4536 to John A. Maguire; |
| 10. | 259° 43' 42" | 566.61 feet | along the remainder of Grant 4536 to John A. Maguire; |
| 11. | 185° 50' 40" | 891.19 feet | along the remainder of Grant 4536 to John A. Maguire; |

- | | | |
|------------------|--------------|---|
| 12. 204° 06' 08" | 776.12 feet | along the remainder of Grant 4536 to John A. Maguire; |
| 13. 173° 39' 44" | 502.98 feet | along the remainder of Grant 4536 to John A. Maguire; |
| 14. 263° 39' 44" | 2054.03 feet | along the remainder of Grant 4536 to John A. Maguire to the point of beginning and containing an area of 179.355 acres, more or less. |

TOGETHER WITH:

A portion of that certain parcel of land being the 30.00 foot wide State of Hawaii Right of Way as shown on the State of Hawaii, Department of Accounting and General Services, Survey Division Map, CSF No. 20120 as the King's Highway, situate at O'oma 2nd, North Kona, Island of Hawaii, State of Hawaii, described as follows:

Beginning at the Northwest corner of this parcel of land, the coordinates of said point of beginning referred to Government Survey Triangulation Station "Akahipuu" being 15,474.96 feet South and 23,940.04 feet West, thence running by azimuths measured clockwise from true South:

- | | | |
|------------------|--------------|--|
| 1. 263° 39' 44" | 33.11 feet | along the remainder of King's Highway; |
| 2. 328° 31' 30" | 2633.66 feet | along Grant S-15665 to American Trust Company of Hawaii, Inc.; |
| 3. 79° 43' 42.4" | 32.18 feet | along the remainder of King's Highway; |
| 4. 148° 31' 32" | 2636.08 feet | along Grant 4536 to John A. Mcguire to the point of beginning and containing an area of 1.814 acres, more or less. |



Description prepared by:
M&E PACIFIC, INC.

Roy G. Hollowell

Roy G. Hollowell
Licensed Professional Land Surveyor
Certificate No. 12741
Hilo, Hawaii, February 25, 2008

Petitioner's Exhibit 5B

11" x 17" Petition Area Map

Petitioner's Exhibit 7
Limited Warranty Deed

25

R-828

STATE OF HAWAII
BUREAU OF CONVEYANCES
RECORDED

JAN 30, 2002 09:30 AM

Doc No(s) 2002-016768

/s/ CARL T. WATANABE
ACTING
REGISTRAR OF CONVEYANCES
CONVEYANCE TAX: \$2835.00

LAND COURT

KM

REGULAR SYSTEM

Return by Mail () Pickup () to:
James H. Watson, Esquire
HOLLAND & KNIGHT LLP
1201 West Peachtree Street, N.E., Ste. 2000
Atlanta, Georgia 30309-3400

FAM

Tax Map Keys: (3) 7-3-9-4 and (3) 7-3-9-22

Total Pages 1

LIMITED WARRANTY DEED

THIS Limited Warranty Deed, made this 18 day of January, 2002, by and between KONA KAI ASSOCIATES, a Hawaii limited partnership, whose address is c/o Holland & Knight LLP, Attn: Francis W. Costello, Esq., 633 West Fifth Street, Suite 2100, Los Angeles, California 90071-2017, hereinafter called the "Grantor," and CLIFTO'S KONA COAST LLC, a Nevada limited liability company, whose address is 68-1857 Lina Poepoe Street, Waikoloa, Hawaii 96743, hereinafter called the "Grantee;"

WITNESSETH:

That the Grantor, for and in consideration of the sum of Ten and NO/100 Dollars (\$10.00) and other valuable consideration, the receipt of which is hereby acknowledged, does hereby grant, bargain, sell, and convey unto the Grantee, and its successors and assigns, forever, the following:

ALL OF THE LAND IN THE COUNTY OF HAWAII, STATE
OF HAWAII, DESCRIBED IN EXHIBIT A ATTACHED
HERETO AND MADE A PART HEREOF.

TO HAVE AND TO HOLD the said land, together with all buildings, improvements, rights, easements, privileges, and appurtenances thereon and thereunto belonging or appertaining or held and enjoyed therewith, and all of the estate, right, title, and interest of the Grantor both at law and in equity, therein and thereto, unto the Grantee as aforesaid, in fee simple (collectively referred to herein as the "Property"); SUBJECT, HOWEVER, as set forth herein; and PROVIDED, HOWEVER, as follows: Grantee acknowledges and agrees that, without limiting the limited warranty expressly provided in the next paragraph, Grantor has not made, does not make and specifically negates and disclaims any representations, warranties, promises, covenants, agreements, or guaranties of any kind or character whatsoever, whether express or implied, oral or written, past, present, or future, of, as to, concerning or with respect to (a) the value, nature, quality or condition of the Property, including, without limitation, the water, soil, and geology, (b) income or other benefit to be derived from the Property, (c) the suitability of the Property for any and all activities and uses which Grantee may conduct thereon, or the availability of any governmental approvals for any use of the Property which Grantee may wish to make, (d) the compliance of or by the Property or its operation with any laws, rules, ordinances or regulations of any applicable governmental authority or body, (e) the habitability, merchantability, marketability, profitability or fitness for a particular purpose of the Property, (f) developability, access, availability of utilities or other infrastructure, possession, historical, archaeological, cultural, and similar aspects, (g) the manner, quality, state of repair or lack of repair of the Property, (h) the area or acreage of the Property, (i) governmental or private claims to use of the shoreline or adjacent areas on the Property or any trails, roads, rights of way, paths, or other means of traversing the Property, and (j) any other matter with respect to the Property; and specifically, that Grantor has not made, does not make, and specifically disclaims any representations regarding compliance with any environmental protection, pollution, land use or zoning laws, rules, regulations, orders or requirements, including the existence in or on the Property of hazardous materials (except Grantor represents that as of the date of this deed, Grantor has not actually received any notice in writing from a governmental agency or any other party concerning any of the following: (A) the presence of hazardous substances, pollutants, or contaminants as defined by hazardous material laws on the Property ("Hazardous Materials"), (B) any reporting, remediation, or clean-up obligations of the owner of the Property concerning Hazardous Materials, or (C) a condemnation of all or a portion of the Property or other indication from the government that it intends to acquire all or a portion of the Property). Grantee further acknowledges and agrees that the sale of the Property is made on an "as is" condition and basis with all faults, in all respects, and that the purchase price of the Property was adjusted by negotiation to reflect that the Property is sold by Grantor and purchased by Grantee subject to the foregoing. Grantee further acknowledges and agrees that Grantor shall not be deemed to have made any representation or warranty regarding the accuracy or completeness of any information provided to Grantee in connection with Grantee's investigation and inspection of or relating to the Property, or regarding the truth of any statements in such information or regarding any omissions from such information, that Grantor has not made any independent investigation or verification of any such information provided to Grantee, and that Grantee has conducted its own independent analysis of the Property and any and all such information provided to Grantee, without reliance upon any representation or warranty by Grantor or any agent or representative

of Grantor, with respect to any such information. Grantee further acknowledges and agrees that Grantor's determination that conditions to Grantor's making a real property and sale with Grantee have been satisfied does not create any express or implied representation or warranty by Grantor to Grantee regarding existence or non-existence of facts or circumstances contemplated by such conditions, and Grantor's conveyance of the Property to Grantee pursuant to satisfaction of such conditions shall not be deemed to expand or reduce the limited warranty in this deed.

And without limiting the foregoing, the Grantor, for itself and its successors, hereby covenants with the Grantee and the Grantee's successors and assigns that said property is free and clear of all encumbrances made or suffered by the Grantor except as set forth herein, and except for real property taxes for the current year, which are to be prorated as of the date hereof.

The respective terms "Grantor" and "Grantee" used herein, or any pronoun used in place thereof, shall mean and include the masculine or feminine, the singular or the plural, individuals or corporations and their respective successors and assigns, as the case may be.

The parties hereto agree that this instrument may be executed in identical counterparts, each of which shall be deemed an original, and said counterparts shall together constitute one and the same agreement, binding all of the parties hereto, notwithstanding all of the parties are not signatory to the original or the same counterparts. For all purposes, including, without limitation, recordation, filing and delivery of this instrument, duplicate unexecuted and unacknowledged pages of the counterparts may be discarded and the remaining pages assembled as one document.

**[THE REMAINDER OF THIS PAGE IS INTENTIONALLY BLANK. SIGNATURES
ARE INTENTIONALLY PLACED ON A SUBSEQUENT PAGE]**

And the Grantor, for itself and its successors, hereby covenants with the Grantee and the Grantee's successors and assigns that said property is free and clear of all encumbrances made or suffered by the Grantor except as set forth herein, and except for real property taxes for the current year, which are to be prorated as of the date hereof.

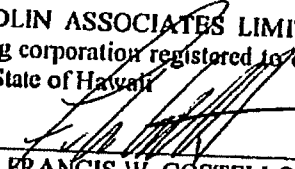
The respective terms "Grantor" and "Grantee" used herein, or any pronoun used in place thereof, shall mean and include the masculine or feminine, the singular or the plural, individuals or corporations and their respective successors and assigns, as the case may be.

The parties hereto agree that this instrument may be executed in identical counterparts, each of which shall be deemed an original, and said counterparts shall together constitute one and the same agreement, binding all of the parties hereto, notwithstanding all of the parties are not signatory to the original or the same counterparts. For all purposes, including, without limitation, recordation, filing and delivery of this instrument, duplicate unexecuted and unacknowledged pages of the counterparts may be discarded and the remaining pages assembled as one document.

IN WITNESS WHEREOF, this instrument has been executed by the parties described above, as of the dates herein evidenced.

KONA KAI ASSOCIATES, a Hawaii limited partnership

By: RODLIN ASSOCIATES LIMITED, a Hong Kong corporation registered to do business in the State of Hawaii

By: 
FRANCIS W. COSTELLO
Its Attorney in Fact

"Grantor"

CLIFTO'S KONA COAST LLC, a Nevada limited liability company

By: _____
Its

Print Name: _____

Title: _____

"Grantee"

IN WITNESS WHEREOF, this instrument has been executed by the parties described
above, as of the dates herein evidenced.

KONA KAI ASSOCIATES, a Hawaii limited
partnership

By: RODLIN ASSOCIATES LIMITED, a Hong
Kong corporation registered to do business in
the State of Hawaii

By: _____
FRANCIS W. COSTELLO
Its Attorney in Fact

"Grantor"

CLIFTO'S KONA COAST LLC, a Nevada limited
liability company

By: C.M.M.
Its MANAGING MEMBER

Print Name: CLIFF M. MORRIS

Title: _____

"Grantee"

STATE OF CALIFORNIA)
)
) SS:
COUNTY OF LOS ANGELES)

On this 18th day of January, 2002, before me personally appeared FRANCIS W. COSTELLO, proved to me by satisfactory evidence to be the person who executed the foregoing instrument, and, being by me duly sworn, did say that he is the Attorney-in-Fact for RODLIN ASSOCIATES LIMITED, a Hong Kong corporation, which is general partner of KONA KAI ASSOCIATES, a Hawaii limited partnership, duly appointed as such Attorney-in-Fact under that certain Power of Attorney dated August, 2000, which Power of Attorney is now in full force and effect; and that the foregoing instrument was executed in the name and behalf of said Rodlin Associates Limited as such general partner by said Francis W. Costello as such Attorney-in-Fact; and said Francis W. Costello acknowledged such instrument to be the free act and deed of said Rodlin Associates Limited and of said Kona Kai Associates.



Signature: Dorothy M. Gamba

Print Name: DOROTHY M. GAMBORA

Notary Public, State of California

My Commission Expires: January 30, 2003

[Notary Seal]

STATE OF HAWAII)
)
) SS:
CITY AND COUNTY OF HONOLULU)

On January ____, 2002, before me appeared _____ to me personally known, who, being by me duly sworn or affirmed, did say that such person executed the foregoing instrument as the free act and deed of such person, and if applicable in the capacity shown, having been duly authorized to execute such instrument in such capacity.

Signature: _____

Print Name: _____

Notary Public, State of Hawaii

My Commission Expires: _____

[Notary Seal]

STATE OF CALIFORNIA)
) SS:
COUNTY OF LOS ANGELES)

On this ____ day of January, 2002, before me personally appeared FRANCIS W. COSTELLO, proved to me by satisfactory evidence to be the person who executed the foregoing instrument, and, being by me duly sworn, did say that he is the Attorney-in-Fact for RODLIN ASSOCIATES LIMITED, a Hong Kong corporation, which is general partner of KONA KAI ASSOCIATES, a Hawaii limited partnership, duly appointed as such Attorney-in-Fact under that certain Power of Attorney dated August, 2000, recorded in the Bureau of Conveyances, State of Hawaii, as Document No. 2001-174404, which Power of Attorney is now in full force and effect; and that the foregoing instrument was executed in the name and behalf of said Rodlin Associates Limited as such general partner by said Francis W. Costello as such Attorney-in-Fact; and said Francis W. Costello acknowledged such instrument to be the free act and deed of said Rodlin Associates Limited and of said Kona Kai Associates.

Signature: _____

Print Name: _____
Notary Public, State of California
My Commission Expires: _____

[Notary Seal]

STATE OF HAWAII)
 HAWAII) SS:
CITY AND COUNTY OF HONOLULU)

On January 25, 2002, before me appeared CLIFF M MORRIS to me personally known, who, being by me duly sworn or affirmed, did say that such person executed the foregoing instrument as the free act and deed of such person, and if applicable in the capacity shown, having been duly authorized to execute such instrument in such capacity.

Signature: Stacie K. Francis

Print Name: STACIE K FRANCIS

Notary Public, State of Hawaii

My Commission Expires: 10/28/05

[Notary Seal]

ATLI #502067 v2

EXHIBIT A

PARCEL FIRST

ALL of that certain parcel of land (being a portion of Grant 4536 to John A. Maguire) situated at O'oma 2nd, North Kona, Island and County of Hawaii, State of Hawaii, being LOT 1, described as follows:

Beginning at the northeast corner of this parcel of land and on the southwest side of King's Highway, the coordinates of said point of beginning referred to Government Survey Triangulation Station "AKAHIPUU" being 15,474.96 feet South and 23,940.04 feet West, then running by azimuths measured clockwise from True South:

1. 328° 31' 32" 2636.08 feet along the southwest side of King's Highway;
2. 79° 43' 42.4" 4388.69 feet along Grant 3086 to Kapena;
3. 79° 25' 16" 55.83 feet along Grant 3086 to Kapena to highwater mark at seashore;
4. Thence along highwater mark at seashore, the direct azimuth and distance being:
180° 34' 37" 2711.37 feet;
5. 263° 39' 44" 2987.85 feet along the remainder of Grant 4536 to John A. Maguire to the point of beginning and containing an area of 217.566 acres, more or less.

EXCEPTING any portion of the above-described property lying below the line of high water, said line of high water being defined by Sections 205A-41 to 205A-43.6 of the Hawaii Revised Statutes, as amended, and also excepting any artificial accretions to said property waterward of said high water line.

PARCEL SECOND

ALL of that certain parcel of land (being a portion of the Government Land of O'oma 2nd) situated at O'oma 2nd, North Kona, Island and County of Hawaii, State of Hawaii, being LOT 2, described as follows:

Beginning at the southeast corner of this parcel of land and on the west side of Queen Kaahumanu Highway (Kailua-Kawaihae Road, Section II), the coordinates of said point of beginning referred to Government Survey Triangulation Station "AKAHIPUU" being 17,760.95 feet South and 21,173.51 feet West, thence running by azimuths measured clockwise from True South:

1. 91° 50' 1359.22 feet along Grant 2942 to Hulikoa;
2. 148° 31' 30" 2633.66 feet along the northeast side of King's Highway;
3. 258° 25' 16" 1749.00 feet along High Technology Industrial Park, Governor's Executive Order 3282;
4. Thence along the west side of Queen Kaahumanu Highway (Kailua-Kawaihae Road, Section II), on a curve to the left with a radius of 2504.00 feet, the chord azimuth and distance being:
341° 38' 02.6" 2196.88 feet;
5. 329° 26' 55" 345.91 feet along the west side of Queen Kaahumanu Highway (Kailua-Kawaihae Road, Section II);
6. 329° 26' 55" 50.00 feet along the west side of Queen Kaahumanu Highway (Kailua-Kawaihae Road, Section II);
7. 329° 26' 55" 30.00 feet along the west side of Queen Kaahumanu Highway (Kailua-Kawaihae Road, Section II);
8. 329° 26' 55" 219.39 feet along the west side of Queen Kaahumanu Highway (Kailua-Kawaihae Road Section II) to the point of beginning and containing an area of 83.00 acres, more or less.

BEING the same land conveyed by Bank of Hawaii, a Hawaii corporation, by its division Pacific Century Trust, as Trustee under that certain unrecorded Land Trust Agreement dated December 28, 1982, and Land Trust No. 90-01646, as grantor, to Kona Kai Associates, a Hawaii limited partnership, as grantee, by that certain Limited Warranty Deed dated December 4, 2001, recorded in the Bureau of Conveyances of the State of Hawaii as Document No. 2001-199565.

SUBJECT, HOWEVER, to the following:

1. Title to all mineral and metallic mines reserved to the State of Hawaii.
2. ASTO PARCEL FIRST:
 - a) Government Triangulation Station called "Puhili" on the southerly boundary of the land described herein. Attention is invited to the provisions of Section 172-13 of the Hawaii Revised Statutes relative to destruction, defacing, or removal of survey monuments.
 - b) Location of seaward boundary in accordance with the laws of the State of Hawaii and shoreline setback line in accordance with County regulation and/or ordinance, and the effect, if any, upon the area of the land described herein.
 - c) Rights and easements for commerce, navigation, and fishery in favor of the public or the federal, state or municipal government, including rights in and to that

portion of the property lying below the mean high water mark of the Pacific Ocean, currently or hereafter established by law or court ruling.

- d) Lack of right of access to and from Lot I to a public highway.
- e) Any public trail along the seaward boundary.

3. AS TO PARCEL SECOND:

- a) Reservations to the State of Hawaii as reserved in Land Patent Grant No. S-15,665.
- b) Conditions in Land Patent Grant No. S-15,665.
- c) Access shall not be permitted into and from Queen Kaahumanu Highway (Kailua-Kawaihae Road, Section II) over and across Courses 4, 5 and 8 of the land described herein, as set forth in Land Patent Grant No. S-15,665.
- d) Reservation to the State of Hawaii and its successors and assigns of the Mamalahoa Trail over and across the land described herein, as set forth in Land Patent Grant No. S-15,665.
- e) CERTIFICATE OF CONDITIONS by the High Technology Development Corporation dated March 7, 1986, recorded in the Bureau of Conveyances in Book 19341, Page 736.
- f) Subject to non-exclusive Road Easement from the State of Hawaii to Paul Lynch as set forth in Land Patent Grant No. S-15,665, more particularly described as follows:

Beginning at the northeast corner of this easement, being also the end of Course 6 of the land described as said PARCEL SECOND, thence running by azimuths measured clockwise from true south:

- 1. $329^{\circ} 26' 55''$ 30.00 feet along the west side of Queen Kaahumanu Highway (Kailua-Kawaihae Road, Section II);
- 2. $59^{\circ} 26' 55''$ 189.10 feet;
- 3. Thence on curve to the right with a radius of 540.00 feet, the chord azimuth and distance being: $75^{\circ} 38' 27.5''$ 301.17 feet;
- 4. $91^{\circ} 50'$ 792.80 feet along Grant 2942 to Hulikoa;
- 5. $148^{\circ} 31' 30''$ 35.90 feet along the northeast side of King's Highway;

6. 271° 50' 812.51 feet;
7. Thence on a curve to the left with a radius of 510.00 feet, the chord azimuth and distance being: 255° 38' 27.5" 284.44 feet;
8. 239° 26' 55" 189.10 feet to the point of beginning and containing an area of 38,655 square feet or 0.887 acre, more or less.

As also described as a non-exclusive easement and right-of-way for pedestrian and vehicular traffic over and across a 30-foot wide road easement, as granted in Grant of Easement S-4830 dated December 3, 1982, recorded in the Bureau of Conveyances in Book 16727 at Page 370.

NOTE: Grant of Easement under General Lease S-4876 from the State of Hawaii to Paul Lynch has expired according to the records in the Department of Land and Natural Resources

4. MUTUAL AGREEMENT

By and Between: Kahala Capital Corporation, a Hawaii corporation, by and through its Trustee, Robert D. Van Dorpe, and Cyanotech Corporation, a Nevada corporation, by and through its President Gerald Cysowski, Ph.D., and its Vice President, Kelly Moorhead, and Keahole Point Association, an unincorporated association, by and through its Vice President, Philip Wilson;

Dated: February 17, 1993;

Recorded in the Bureau of Conveyances as Document No. 93-026582.

5. Any unrecorded leases and matters arising from or affecting the same.
6. Discrepancies, conflicts in boundary lines, shortage in area, encroachments, or any other matters which a correct survey or archaeological study would or does disclose.
7. All customary and traditional rights and practices, including without limitation those exercised for subsistence, cultural, religious, access, or gathering purposes, as provided for in the Hawaii Constitution or the Hawaii Revised Statutes.

Petitioner's Exhibit 7A

Revised Title Report

REVISED



First American Title Company, Inc.

1177 Kapiolani Boulevard

Honolulu, HI 96814

Jennifer A. Benck
Carlsmith Ball, LLP
1001 Bishop Street, ASB Tower, Suite 2200
Honolulu, HI 96813
Phone: (808)523-2557
Fax: (808)523-0842

Order Number: 2735492 (MQW)

Title Officer: Mila Wright
Phone: (808)536-3866
Fax No.: (866)427-6115
E-Mail: mqwright@firstam.com
Owner: North Kona Village LLC
Property: O'oma 2nd
North Kona, HI 96740

PRELIMINARY REPORT

In response to the above referenced application for a policy of title insurance, this company hereby reports that it is prepared to issue, or cause to be issued, as of the date hereof, a Policy or Policies of Title Insurance describing the land and the estate or interest therein hereinafter set forth, insuring against loss which may be sustained by reason of any defect, lien or encumbrance not shown or referred to as an Exception below or not excluded from coverage pursuant to the printed Schedules, Conditions and Stipulations of said Policy forms.

The printed Exceptions and Exclusions from the coverage of said Policy or Policies are set forth in Exhibit A attached. Copies of the Policy forms should be read. They are available from the office which issued this report.

Please read the exceptions shown or referred to below and the exceptions and exclusions set forth in Exhibit A of this report carefully. The exceptions and exclusions are meant to provide you with notice of matters which are not covered under the terms of the title insurance policy and should be carefully considered.

It is important to note that this preliminary report is not a written representation as to the condition of title and may not list all liens, defects, and encumbrances affecting title to the land.

This report (and any supplements or amendments hereto) is issued solely for the purpose of facilitating the issuance of a policy of title insurance and no liability is assumed hereby. If it is desired that liability be assumed prior to the issuance of a policy of title insurance, a Binder or Commitment should be requested.

First American Title

**Petitioner's
Exhibit 7A**

Dated as of March 26, 2007 at 8:00 A.M.

The form of Policy of title insurance contemplated by this report is:

None

A specific request should be made if another form or additional coverage is desired.

Title to said estate or interest at the date hereof is vested in:

North Kona Village LLC, formerly known as Clifto's Kona Coast LLC, a Nevada limited liability company

The estate or interest in the land hereinafter described or referred to covered by this Report is:

A fee.

The Land referred to herein is described as follows:

(See attached Legal Description)

At the date hereof exceptions to coverage in addition to the printed Exceptions and Exclusions in said policy form would be as follows:

1. Real property tax assessments for the fiscal year 2006-2007:

Tax Map Key No.: (3) 7-3-009-004-0000 (Parcel First)

Class No.: 6

First Installment: \$5,115.47, PAID, (8/20)

Second Installment: \$5,115.46, PAID, (2/20)

Note: Possible roll back taxes for real property classified as Class 5 or 6.

Tax Map Key No.: (3) 7-3-009-022-0000 (Parcel Second)

Class No.: 4

First Installment: \$12,605.85, PAID, (8/20)

Second Installment: \$12,605.85, PAID, (2/20)

2. Title to all mineral and metallic mines reserved to the State of Hawaii.

3. AS TO PARCEL FIRST:

- a. Reservation in favor of the State of Hawaii of government survey triangulation station "Puhili", together with reasonable access thereto.
 - b. Shoreline setback lines as they may be established by the State Land Use Commission or by the various Counties pursuant to the Hawaii Revised Statutes.
 - c. Rights and easements for commerce, navigation, and fishery in favor of the public or the federal, state or municipal government.
4. AS TO PARCEL SECOND:
- a. Reservations to the State of Hawaii, as set forth or disclosed by the Land Patent Grant No. S-15,665.
 - b. Terms, provisions, reservations, covenants, conditions and restrictions, but deleting any of the aforementioned indicating a preference, limitation or discrimination based on race, color, religion, sex, handicap, familial status, national origin, sexual orientation, marital status, ancestry, source of income or disability, to the extent such covenants, conditions or restrictions violate Title 42, Section 3604(c), of the United States Codes or Chapter 515 of the Hawaii Revised Statutes, as contained in the Conditions in Land Patent Grant No. S-15,665.
 - c. Restriction of vehicular access as described in or disclosed by the Land Patent Grant No. S-15,665.
 - d. Reservation to the State of Hawaii, its successors and assigns the Mamalahoa Trail over and across the land described herein, as set forth in Land Patent Grant No. S-15,665.
5. The terms and provisions contained in the Mutual Agreement recorded February 18, 1993 as Regular System Document No. 93-026582 of Official Records.
6. All customary and traditional rights, of native Hawaiians as provided for by law, for subsistence, cultural and religious purposes, which rights may involve access to the subject property.
7. A mortgage to secure an original principal indebtedness of \$1,300,000.00, and any other amounts or obligations secured thereby.
Dated: January 25, 2002
Mortgagor: Clifto's Kona Coast LLC, a Nevada limited liability company
Mortgagee: Pete, LLC, a California limited liability company
Recorded January 30, 2002 as Regular System Document No. 2002-016770 of Official Records.
8. A mortgage to secure an original principal indebtedness of \$2,150,000.00, and any other amounts or obligations secured thereby.
Dated: February 23, 2005
Mortgagor: Clifto's Kona Coast LLC, a Nevada limited liability company
Mortgagee: Arnold A. Volny
Recorded March 24, 2005 as Regular System Document No. 2005-058229 of Official Records.
9. The terms and provisions contained in the Amended and Restated Certification of Conditions recorded March 30, 2007 as Regular System Document No. 2007-058335 of Official Records.

INFORMATIONAL NOTES

Note: The policy to be issued may contain an arbitration clause. When the Amount of Insurance is less than the certain dollar amount set forth in any applicable arbitration clause, all arbitrable matters shall be arbitrated at the option of either the Company or the Insured as the exclusive remedy of the parties. If you desire to review the terms of the policy, including any arbitration clause that may be included, contact the office that issued this Commitment or Report to obtain a sample of the policy jacket for the policy that is to be issued in connection with your transaction.

The map attached, if any, may or may not be a survey of the land depicted hereon. First American expressly disclaims any liability for loss or damage which may result from reliance on this map except to the extent coverage for such loss or damage is expressly provided by the terms and provisions of the title insurance policy, if any, to which this map is attached.

LEGAL DESCRIPTION

Real property in the City of North Kona, County of Hawaii, State of Hawaii, described as follows:

PARCEL FIRST:

ALL OF THAT CERTAIN PARCEL OF LAND (BEING A PORTION OF GRANT 4536 TO JOHN A. MAGUIRE) SITUATED AT OOMA 2ND NORTH KONA, ISLAND AND COUNTY OF HAWAII, STATE OF HAWAII, BEING LOT 1, DESCRIBED AS FOLLOWS:

BEGINNING AT THE NORTHEAST CORNER OF THIS PARCEL OF LAND AND ON THE SOUTHWEST SIDE OF KING'S HIGHWAY, THE COORDINATES OF SAID POINT OF BEGINNING REFERRED TO GOVERNMENT SURVEY TRIANGULATION STATION "AKAHIPUU" BEING 15,474.96 FEET SOUTH AND 23,940.04 FEET WEST, THENCE RUNNING BY AZIMUTHS MEASURED CLOCKWISE FROM TRUE SOUTH:

1. 328° 31' 32" 2636.08 FEET ALONG THE SOUTHWEST SIDE OF KING'S HIGHWAY;
2. 79° 43' 42.4" 4388.69 FEET ALONG GRANT 3086 TO KAPENA;
3. 79° 25' 16" 55.83 FEET ALONG GRANT 3086 TO KAPENA TO HIGHWATER MARK AT SEASHORE;
4. THENCE ALONG HIGHWATER MARK AT SEASHORE, THE DIRECT AZIMUTH AND DISTANCE BEING:

180° 34' 37" 2711.37 FEET;
5. 263° 39' 44" 2987.85 FEET ALONG THE REMAINDER OF GRANT 4536 TO JOHN A. MAGUIRE TO THE POINT OF BEGINNING AND CONTAINING AN AREA OF 217.566 ACRES, MORE OR LESS.

EXCEPTING ANY PORTION OF THE LAND BELOW THE LINE OF SHORELINE VEGETATION WHERE IT WAS LOCATED PRIOR TO ANY ARTIFICIAL OR AVULSIVE CHANGES.

PARCEL SECOND:

ALL OF THAT CERTAIN PARCEL OF LAND (BEING A PORTION OF THE GOVERNMENT LAND OF OOMA 2ND) SITUATED AT OOMA 2ND NORTH KONA, ISLAND AND COUNTY OF HAWAII, STATE OF HAWAII, BEING LOT 2, DESCRIBED AS FOLLOWS:

BEGINNING AT THE SOUTHEAST CORNER OF THIS PARCEL OF LAND AND ON THE WEST SIDE OF QUEEN'S KAAHUMANU HIGHWAY (KAILUA-KAWAIHAE ROAD, SECTION II), THE COORDINATES OF SAID POINT OF BEGINNING REFERRED TO GOVERNMENT SURVEY TRIANGULATION STATION "AKAHIPUU" BEING 17,760.95 FEET SOUTH AND 21,173.51 FEET WEST, THENCE RUNNING BY AZIMUTHS MEASURED CLOCKWISE FROM TRUE SOUTH:

1. 91° 50' 1359.22 FEET ALONG GRANT 2942 TO HULIKOA;
2. 148° 31' 30" 2633.66 FEET ALONG THE NORTHEAST SIDE OF KING'S

HIGHWAY;

3. 258° 25' 16" 1749.00 FEET ALONG HIGH TECHNOLOGY INDUSTRIAL PARK, GOVERNOR'S EXECUTIVE ORDER 3282;

4. THENCE ALONG THE WEST SIDE OF QUEEN KAAHUMANU HIGHWAY (KAILUA-KAWAIHAE ROAD, SECTION II), ON A CURVE TO THE LEFT WITH A RADIUS OF 2504.00 FEET, THE CHORD AZIMUTH AND DISTANCE BEING:

341° 38' 02.6" 2196.88 FEET;

5. 329° 26' 55" 345.91 FEET ALONG THE WEST SIDE OF QUEEN KAAHUMANU HIGHWAY (KAILUA-KAWAIHAE ROAD, SECTION II);

6. 329° 26' 55" 50.00 FEET ALONG THE WEST SIDE OF QUEEN KAAHUMANU HIGHWAY (KAILUA-KAWAIHAE ROAD, SECTION II);

7. 329° 26' 55" 30.00 FEET ALONG THE WEST SIDE OF QUEEN KAAHUMANU HIGHWAY (KAILUA-KAWAIHAE ROAD, SECTION II);

8. 329° 26' 55" 219.39 FEET ALONG THE WEST SIDE OF QUEEN KAAHUMANU HIGHWAY (KAILUA-KAWAIHAE ROAD, SECTION II) TO THE POINT OF BEGINNING AND CONTAINING AN AREA OF 83.00 ACRES.

BEING ALL OF THE PREMISES CONVEYED BY LIMITED WARRANTY DEED RECORDED JANUARY 30, 2002 AS REGULAR SYSTEM DOCUMENT NO. 2002-016768 OF OFFICIAL RECORDS.
GRANTOR: KONA KAI ASSOCIATES, A HAWAII LIMITED PARTNERSHIP
GRANTEE: CLIFTO'S KONA COAST LLC, A NEVADA LIMITED LIABILITY COMPANY

NOTE: DEPARTMENT OF COMMERCE AND CONSUMER AFFAIRS, STATE OF HAWAII DISCLOSES THE CHANGE OF NAME OF CLIFTO'S KONA COAST LLC TO NORTH KONA VILLAGE LLC ON JULY 1, 2005.

TMK(S): (3) 7-3-009-004-0000 (PARCEL FIRST)
7-3-009-022-0000 (PARCEL SECOND)

EXHIBIT A
LIST OF PRINTED EXCEPTIONS AND EXCLUSIONS (BY POLICY TYPE)

1. CALIFORNIA LAND TITLE ASSOCIATION STANDARD COVERAGE POLICY - 1990
SCHEDULE B

EXCEPTIONS FROM COVERAGE

This policy does not insure against loss or damage (and the Company will not pay costs, attorneys' fees or expenses) which arise by reason of:

1. Taxes or assessments which are not shown as existing liens by the records of any taxing authority that levies taxes or assessments on real property or by the public records. Proceedings by a public agency which may result in taxes or assessments, or notice of such proceedings, whether or not shown by the records of such agency or by the public records.
2. Any facts, rights, interests, or claims which are not shown by the public records but which could be ascertained by an inspection of the land or which may be asserted by persons in possession thereof.
3. Easements, liens or encumbrances, or claims thereof, which are not shown by the public records.
4. Discrepancies, conflicts in boundary lines, shortage in area, encroachments, or any other facts which a correct survey would disclose, and which are not shown by the public records.
5. (a) Unpatented mining claims; (b) reservations or exceptions in patents or in Acts authorizing the issuance thereof; (c) water rights, claims or title to water, whether or not the matters excepted under (a), (b), or (c) are shown by the public records.

EXCLUSIONS FROM COVERAGE

The following matters are expressly excluded from the coverage of this policy and the Company will not pay loss or damage, costs, attorneys' fees or expenses which arise by reason of:

1. (a) Any law, ordinance or governmental regulation (including but not limited to building and zoning laws, ordinances, or regulations) restricting, regulating, prohibiting or relating to (i) the occupancy, use, or enjoyment of the land; (ii) the character, dimensions or location of any improvement now or hereafter erected on the land; (iii) a separation in ownership or a change in the dimensions or area of the land or any parcel of which the land is or was a part; or (iv) environmental protection, or the effect of any violation of these laws, ordinances or governmental regulations, except to the extent that a notice of the enforcement thereof or a notice of a defect, lien or encumbrance resulting from a violation or alleged violation affecting the land has been recorded in the public records at Date of Policy.
(b) Any governmental police power not excluded by (a) above, except to the extent that a notice of the exercise thereof or a notice of a defect, lien or encumbrance resulting from a violation or alleged violation affecting the land has been recorded in the public records at Date of Policy.
2. Rights of eminent domain unless notice of the exercise thereof has been recorded in the public records at Date of Policy, but not excluding from coverage any taking which has occurred prior to Date of Policy which would be binding on the rights of a purchaser for value without knowledge.
3. Defects, liens, encumbrances, adverse claims or other matters:
 - (a) whether or not recorded in the public records at Date of Policy, but created, suffered, assumed or agreed to by the insured claimant;
 - (b) not known to the Company, not recorded in the public records at Date of Policy, but known to the insured claimant and not disclosed in writing to the Company by the insured claimant prior to the date the insured claimant became an insured under this policy;
 - (c) resulting in no loss or damage to the insured claimant;
 - (d) attaching or created subsequent to Date of Policy; or
 - (e) resulting in loss or damage which would not have been sustained if the insured claimant had paid value for the insured mortgage or for the estate or interest insured by this policy.
4. Unenforceability of the lien of the insured mortgage because of the inability or failure of the insured at Date of Policy, or the inability or failure of any subsequent owner of the indebtedness, to comply with applicable "doing business" laws of the state in which the land is situated.
5. Invalidity or unenforceability of the lien of the insured mortgage, or claim thereof, which arises out of the transaction evidenced by the insured mortgage and is based upon usury or any consumer credit protection or truth in lending law.
6. Any claim, which arises out of the transaction vesting in the insured the estate or interest insured by their policy or the transaction creating the interest of the insured lender, by reason of the operation of federal bankruptcy, state insolvency or similar creditors' rights laws.

2. AMERICAN LAND TITLE ASSOCIATION OWNER'S POLICY FORM B - 1970
SCHEDULE OF EXCLUSIONS FROM COVERAGE

1. Any law, ordinance or governmental regulation (including but not limited to building and zoning ordinances) restricting or regulating or prohibiting the occupancy, use or enjoyment of the land, or regulating the character, dimensions or location of any improvement now or hereafter erected on the land, or prohibiting a separation in ownership or a reduction in the dimensions of area of the land, or the effect of any violation of any such law, ordinance or governmental regulation.
2. Rights of eminent domain or governmental rights of police power unless notice of the exercise of such rights appears in the public records at Date of Policy.
3. Defects, liens, encumbrances, adverse claims, or other matters (a) created, suffered, assumed or agreed to by the insured claimant; (b) not known to the Company and not shown by the public records but known to the insured claimant either at Date of Policy or at the date such claimant acquired an estate or interest insured by this policy and not disclosed in writing by the insured claimant to the Company prior to the date such insured claimant became an insured hereunder; (c) resulting in no loss or damage to the insured claimant; (d) attaching or

created subsequent to Date of Policy; or (e) resulting in loss or damage which would not have been sustained if the insured claimant had paid value for the estate or interest insured by this policy.

**3. AMERICAN LAND TITLE ASSOCIATION OWNER'S POLICY FORM B - 1970
WITH REGIONAL EXCEPTIONS**

When the American Land Title Association policy is used as a Standard Coverage Policy and not as an Extended Coverage Policy the exclusions set forth in paragraph 2 above are used and the following exceptions to coverage appear in the policy.

SCHEDULE B

This policy does not insure against loss or damage by reason of the matters shown in parts one and two following:

Part One

1. Taxes or assessments which are not shown as existing liens by the records of any taxing authority that levies taxes or assessments on real property or by the public records.
2. Any facts, rights, interests, or claims which are not shown by the public records but which could be ascertained by an inspection of said land or by making inquiry of persons in possession thereof.
3. Easements, claims of easement or encumbrances which are not shown by the public records.
4. Discrepancies, conflicts in boundary lines, shortage in area, encroachments, or any other facts which a correct survey would disclose, and which are not shown by public records.
5. Unpatented mining claims; reservations or exceptions in patents or in Acts authorizing the issuance thereof; water rights, claims or title to water.
6. Any lien, or right to a lien, for services, labor or material heretofore or hereafter furnished, imposed by law and not shown by the public records.

**4. AMERICAN LAND TITLE ASSOCIATION LOAN POLICY - 1970
WITH A.L.T.A. ENDORSEMENT FORM 1 COVERAGE
SCHEDULE OF EXCLUSIONS FROM COVERAGE**

1. Any law, ordinance or governmental regulation (including but not limited to building and zoning ordinances) restricting or regulating or prohibiting the occupancy, use or enjoyment of the land, or regulating the character, dimensions or location of any improvement now or hereafter erected on the land, or prohibiting a separation in ownership or a reduction in the dimensions or area of the land, or the effect of any violation of any such law ordinance or governmental regulation.
2. Rights of eminent domain or governmental rights of police power unless notice of the exercise of such rights appears in the public records at Date of Policy.
3. Defects, liens, encumbrances, adverse claims, or other matters (a) created, suffered, assumed or agreed to by the insured claimant, (b) not known to the Company and not shown by the public records but known to the insured claimant either at Date of Policy or at the date such claimant acquired an estate or interest insured by this policy or acquired the insured mortgage and not disclosed in writing by the insured claimant to the Company prior to the date such insured claimant became an insured hereunder, (c) resulting in no loss or damage to the insured claimant; (d) attaching or created subsequent to Date of Policy (except to the extent insurance is afforded herein as to assessments for street improvements under construction or completed at Date of Policy).
4. Unenforceability of the lien of the insured mortgage because of failure of the insured at Date of Policy or of any subsequent owner of the indebtedness to comply with applicable "doing business" laws of the state in which the land is situated.

**5. AMERICAN LAND TITLE ASSOCIATION LOAN POLICY - 1970
WITH REGIONAL EXCEPTIONS**

When the American Land Title Association Lenders Policy is used as a Standard Coverage Policy and not as an Extended Coverage Policy, the exclusions set forth in paragraph 4 above are used and the following exceptions to coverage appear in the policy.

SCHEDULE B

This policy does not insure against loss or damage by reason of the matters shown in parts one and two following:

Part One

1. Taxes or assessments which are not shown as existing liens by the records of any taxing authority that levies taxes or assessments on real property or by the public records.
2. Any facts, rights, interests, or claims which are not shown by the public records but which could be ascertained by an inspection of said land or by making inquiry of persons in possession thereof.
3. Easements, claims of easement or encumbrances which are not shown by the public records.
4. Discrepancies, conflicts in boundary lines, shortage in area, encroachments, or any other facts which a correct survey would disclose, and which are not shown by public records.
5. Unpatented mining claims; reservations or exceptions in patents or in Acts authorizing the issuance thereof; water rights, claims or title to water.
6. Any lien, or right to a lien, for services, labor or material theretofore or hereafter furnished, imposed by law and not shown by the public records.

**6. AMERICAN LAND TITLE ASSOCIATION LOAN POLICY - 1992
WITH A.L.T.A. ENDORSEMENT FORM 1 COVERAGE
EXCLUSIONS FROM COVERAGE**

The following matters are expressly excluded from the coverage of this policy and the Company will not pay loss or damage, costs, attorneys' fees or expenses which arise by reason of:

1. (a) Any law, ordinance or governmental regulation (including but not limited to building and zoning laws, ordinances, or regulations) restricting, regulating, prohibiting or relating to (i) the occupancy, use, or enjoyment of the land; (ii) the character, dimensions or location of any improvement now or hereafter erected on the land; (iii) a separation in ownership or a change in the dimensions or area of the land or any parcel of which the land is or was a part; or (iv) environmental protection, or the effect of any violation of these laws, ordinances or governmental regulations, except to the extent that a notice of the enforcement thereof or a notice of a defect, lien or encumbrance resulting from a violation or alleged violation affecting the land has been recorded in the public records at Date of Policy; (b) Any governmental police power not excluded by (a) above, except to the extent that a notice of the exercise thereof or a notice of a defect, lien or encumbrance resulting from a violation or alleged violation affecting the land has been recorded in the public records at Date of Policy.
2. Rights of eminent domain unless notice of the exercise thereof has been recorded in the public records at Date of Policy, but not excluding from coverage any taking which has occurred prior to Date of Policy which would be binding on the rights of a purchaser for value without knowledge.
3. Defects, liens, encumbrances, adverse claims, or other matters:
 - (a) whether or not recorded in the public records at Date of Policy, but created, suffered, assumed or agreed to by the insured claimant;
 - (b) not known to the Company, not recorded in the public records at Date of Policy, but known to the insured claimant and not disclosed in writing to the Company by the insured claimant prior to the date the insured claimant became an insured under this policy;
 - (c) resulting in no loss or damage to the insured claimant;
 - (d) attaching or created subsequent to Date of Policy (except to the extent that this policy insures the priority of the lien of the insured mortgage over any statutory lien for services, labor or material or the extent insurance is afforded herein as to assessments for street improvements under construction or completed at date of policy); or
 - (e) resulting in loss or damage which would not have been sustained if the insured claimant had paid value for the insured mortgage.
4. Unenforceability of the lien of the insured mortgage because of the inability or failure of the insured at Date of Policy, or the inability or failure of any subsequent owner of the indebtedness, to comply with the applicable "doing business" laws of the state in which the land is situated.
5. Invalidity or unenforceability of the lien of the insured mortgage, or claim thereof, which arises out of the transaction evidenced by the insured mortgage and is based upon usury or any consumer credit protection or truth in lending law.
6. Any statutory lien for services, labor or materials (or the claim of priority of any statutory lien for services, labor or materials over the lien of the insured mortgage) arising from an improvement or work related to the land which is contracted for and commenced subsequent to Date of Policy and is not financed in whole or in part by proceeds of the indebtedness secured by the insured mortgage which at Date of Policy the insured has advanced or is obligated to advance.
7. Any claim, which arises out of the transaction creating the interest of the mortgagee insured by this policy, by reason of the operation of federal bankruptcy, state insolvency, or similar creditors' rights laws, that is based on:
 - (i) the transaction creating the interest of the insured mortgagee being deemed a fraudulent conveyance or fraudulent transfer; or
 - (ii) the subordination of the interest of the insured mortgagee as a result of the application of the doctrine of equitable subordination; or
 - (iii) the transaction creating the interest of the insured mortgagee being deemed a preferential transfer except where the preferential transfer results from the failure:
 - (a) to timely record the instrument of transfer; or
 - (b) of such recordation to impart notice to a purchaser for value or a judgment or lien creditor.

**7. AMERICAN LAND TITLE ASSOCIATION LOAN POLICY - 1992
WITH REGIONAL EXCEPTIONS**

When the American Land Title Association policy is used as a Standard Coverage Policy and not as an Extended Coverage Policy the exclusions set forth in paragraph 6 above are used and the following exceptions to coverage appear in the policy.

SCHEDULE B

This policy does not insure against loss or damage (and the Company will not pay costs, attorneys' fees or expenses) which arise by reason of:

1. Taxes or assessments which are not shown as existing liens by the records of any taxing authority that levies taxes or assessments on real property or by the public records.
2. Any facts, rights, interests, or claims which are not shown by the public records but which could be ascertained by an inspection of said land or by making inquiry of persons in possession thereof.
3. Easements, claims of easement or encumbrances which are not shown by the public records.
4. Discrepancies, conflicts in boundary lines, shortage in area, encroachments, or any other facts which a correct survey would disclose, and which are not shown by public records.
5. Unpatented mining claims; reservations or exceptions in patents or in Acts authorizing the issuance thereof; water rights, claims or title to water.
6. Any lien, or right to a lien, for services, labor or material theretofore or hereafter furnished, imposed by law and not shown by the public records.

8. AMERICAN LAND TITLE ASSOCIATION OWNER'S POLICY - 1992

EXCLUSIONS FROM COVERAGE

The following matters are expressly excluded from the coverage of this policy and the Company will not pay loss or damage, costs, attorneys' fees or expenses which arise by reason of:

1. (a) Any law, ordinance or governmental regulation (including but not limited to building and zoning laws, ordinances, or regulations) restricting, regulating, prohibiting or relating to (i) the occupancy, use, or enjoyment of the land; (ii) the character, dimensions or location of any improvement now or hereafter erected on the land; (iii) a separation in ownership or a change in the dimensions or area of the land or any parcel of which the land is or was a part; or (iv) environmental protection, or the effect of any violation of these laws, ordinances or governmental regulations, except to the extent that a notice of the enforcement thereof or a notice of a defect, lien or encumbrance resulting from a violation or alleged violation affecting the land has been recorded in the public records at Date of Policy.
(b) Any governmental police power not excluded by (a) above, except to the extent that a notice of the exercise thereof or a notice of a defect, lien or encumbrance resulting from a violation or alleged violation affecting the land has been recorded in the public records at Date of Policy.
2. Rights of eminent domain unless notice of the exercise thereof has been recorded in the public records at Date of Policy, but not excluding from coverage any taking which has occurred prior to Date of Policy which would be binding on the rights of a purchaser for value without knowledge.
3. Defects, liens, encumbrances, adverse claims, or other matters:
 - (a) created, suffered, assumed or agreed to by the insured claimant;
 - (b) not known to the Company, not recorded in the public records at Date of Policy, but known to the insured claimant and not disclosed in writing to the Company by the insured claimant prior to the date the insured claimant became an insured under this policy;
 - (c) resulting in no loss or damage to the insured claimant;
 - (d) attaching or created subsequent to Date of Policy; or
 - (e) resulting in loss or damage which would not have been sustained if the insured claimant had paid value for the estate or interest insured by this policy.
4. Any claim, which arises out of the transaction vesting in the insured the estate or interest insured by this policy, by reason of the operation of federal bankruptcy, state insolvency, or similar creditors' rights laws, that is based on:
 - (i) the transaction creating the estate or interest insured by this policy being deemed a fraudulent conveyance or fraudulent transfer; or
 - (ii) the transaction creating the estate or interest insured by this policy being deemed a preferential transfer except where the preferential transfer results from the failure:
 - (a) to timely record the instrument of transfer; or
 - (b) of such recordation to impart notice to a purchaser for value or a judgment or lien creditor.

**9. AMERICAN LAND TITLE ASSOCIATION OWNER'S POLICY - 1992
WITH REGIONAL EXCEPTIONS**

When the American Land Title Association policy is used as a Standard Coverage Policy and not as an Extended Coverage Policy the exclusions set forth in paragraph 8 above are used and the following exceptions to coverage appear in the policy.

SCHEDULE B

This policy does not insure against loss or damage (and the Company will not pay costs, attorneys' fees or expenses) which arise by reason of:
Part One:

1. Taxes or assessments which are not shown as existing liens by the records of any taxing authority that levies taxes or assessments on real property or by the public records.
2. Any facts, rights, interests, or claims which are not shown by the public records but which could be ascertained by an inspection of said land or by making inquiry of persons in possession thereof.
3. Easements, claims of easement or encumbrances which are not shown by the public records.
4. Discrepancies, conflicts in boundary lines, shortage in area, encroachments, or any other facts which a correct survey would disclose, and which are not shown by public records.
5. Unpatented mining claims; reservations or exceptions in patents or in Acts authorizing the issuance thereof; water rights, claims or title to water.
6. Any lien, or right to a lien, for services, labor or material theretofore or hereafter furnished, imposed by law and not shown by the public records.

**10. AMERICAN LAND TITLE ASSOCIATION RESIDENTIAL
TITLE INSURANCE POLICY - 1987
EXCLUSIONS**

In addition to the Exceptions in Schedule B, you are not insured against loss, costs, attorneys' fees and expenses resulting from:

1. Governmental police power, and the existence or violation of any law or government regulation. This includes building and zoning ordinances and also laws and regulations concerning:

- | | |
|----------------------------|----------------------------|
| * land use | * land division |
| * improvements on the land | * environmental protection |

This exclusion does not apply to violations or the enforcement of these matters which appear in the public records at Policy Date.
This exclusion does not limit the zoning coverage described in items 12 and 13 of Covered Title Risks.

2. The right to take the land by condemning it, unless:
 - * a notice of exercising the right appears in the public records on the Policy Date
 - * the taking happened prior to the Policy Date and is binding on you if you bought the land without knowing of the taking.
3. Title Risks:
 - * that are created, allowed, or agreed to by you
 - * that are known to you, but not to us, on the Policy Date - unless they appeared in the public records
 - * that result in no loss to you
 - * that first affect your title after the Policy Date - this does not limit the labor and material lien coverage in Item 8 of Covered Title Risks
4. Failure to pay value for your title.
5. Lack of a right:
 - * to any land outside the area specifically described and referred to in Item 3 of Schedule A, or
 - * in streets, alleys, or waterways that touch your landThis exclusion does not limit the access coverage in Item 5 of Covered Title Risks.

11. EAGLE PROTECTION OWNER'S POLICY

CLTA HOMEOWNER'S POLICY OF TITLE INSURANCE - 1998

ALTA HOMEOWNER'S POLICY OF TITLE INSURANCE - 1998

Covered Risks 14 (Subdivision Law Violation), 15 (Building Permit), 16 (Zoning) and 18 (Encroachment of boundary walls or fences) are subject to Deductible Amounts and Maximum Dollar Limits of Liability

EXCLUSIONS

In addition to the Exceptions in Schedule B, you are not insured against loss, costs, attorneys' fees, and expenses resulting from:

1. Governmental police power, and the existence or violation of any law or government regulation. This includes ordinances, laws and regulations concerning:

a. building	b. zoning
c. land use	d. improvements on the land
e. land division	f. environmental protection

This exclusion does not apply to violations or the enforcement of these matters if notice of the violation or enforcement appears in the Public Records at the Policy Date.
This exclusion does not limit the coverage described in Covered Risk 14, 15, 16, 17 or 24.
2. The failure of Your existing structures, or any part of them, to be constructed in accordance with applicable building codes. This Exclusion does not apply to violations of building codes if notice of the violation appears in the Public Records at the Policy Date.
3. The right to take the Land by condemning it, unless:
 - a. a notice of exercising the right appears in the Public Records at the Policy Date; or
 - b. the taking happened before the Policy Date and is binding on You if You bought the Land without Knowing of the taking.
4. Risks:
 - a. that are created, allowed, or agreed to by You, whether or not they appear in the Public Records;
 - b. that are Known to You at the Policy Date, but not to Us, unless they appear in the Public Records at the Policy Date;
 - c. that result in no loss to You; or
 - d. that first occur after the Policy Date - this does not limit the coverage described in Covered Risk 7, 8.d, 22, 23, 24 or 25.
5. Failure to pay value for Your Title.
6. Lack of a right:
 - a. to any Land outside the area specifically described and referred to in paragraph 3 of Schedule A; and
 - b. in streets, alleys, or waterways that touch the Land.This exclusion does not limit the coverage described in Covered Risk 11 or 18.

12. SECOND GENERATION EAGLE LOAN POLICY AMERICAN LAND TITLE ASSOCIATION EXPANDED COVERAGE RESIDENTIAL LOAN POLICY (10/13/01)

EXCLUSIONS FROM COVERAGE

The following matters are expressly excluded from the coverage of this policy and the Company will not pay loss or damage, costs, attorneys' fees or expenses which arise by reason of:

1. (a) Any law, ordinance or governmental regulation (including but not limited to building and zoning laws, ordinances, or regulations) restricting, regulating, prohibiting or relating to (i) the occupancy, use, or enjoyment of the Land; (ii) the character, dimensions or location of any improvement now or hereafter erected on the Land; (iii) a separation in ownership or a change in the dimensions or area of the Land or any parcel of which the Land is or was a part; or (iv) environmental protection, or the effect of any violation of these laws, ordinances or governmental regulations, except to the extent that a notice of the enforcement thereof or a notice of a defect, lien or encumbrance resulting from a violation or alleged violation affecting the Land has been recorded in the Public Records at Date of Policy. This exclusion

- does not limit the coverage provided under Covered Risks 12, 13, 14 and 16 of this policy.
- (b) Any governmental police power not excluded by (a) above, except to the extent that a notice of the exercise thereof or a notice of a defect, lien or encumbrance resulting from a violation or alleged violation affecting the land has been recorded in the Public Records at Date of Policy. This exclusion does not limit the coverage provided under Covered Risks 12, 13, 14 and 16 of this policy.
2. Rights of eminent domain unless notice of the exercise thereof has been recorded in the Public Records at Date of Policy, but not excluding from coverage any taking which has occurred prior to Date of Policy which would be binding on the rights of a purchaser for value without Knowledge.
 3. Defects, liens, encumbrances, adverse claims or other matters:
 - (a) created, suffered, assumed or agreed to by the Insured Claimant;
 - (b) not Known to the Company, not recorded in the Public Records at Date of Policy, but Known to the Insured Claimant and not disclosed in writing to the Company by the Insured Claimant prior to the date the Insured Claimant became an Insured under this policy;
 - (c) resulting in no loss or damage to the Insured Claimant;
 - (d) attaching or created subsequent to Date of Policy (this paragraph does not limit the coverage provided under Covered Risks 8, 16, 18, 19, 20, 21, 22, 23, 24, 25 and 26); or
 - (e) resulting in loss or damage which would not have been sustained if the Insured Claimant had paid value for the Insured Mortgage.
 4. Unenforceability of the lien of the Insured Mortgage because of the inability or failure of the Insured at Date of Policy, or the inability or failure of any subsequent owner of the indebtedness, to comply with applicable doing business laws of the state in which the Land is situated.
 5. Invalidity or unenforceability of the lien of the Insured Mortgage, or claim thereof, which arises out of the transaction evidenced by the Insured Mortgage and is based upon usury, except as provided in Covered Risk 27, or any consumer credit protection or truth in lending law.
 6. Real property taxes or assessments of any governmental authority which become a lien on the Land subsequent to Date of Policy. This exclusion does not limit the coverage provided under Covered Risks 7, 8 (e) and 26.
 7. Any claim of invalidity, unenforceability or lack of priority of the lien of the Insured Mortgage as to advances or modifications made after the Insured has Knowledge that the vestee shown in Schedule A is no longer the owner of the estate or interest covered by this policy. This exclusion does not limit the coverage provided in Covered Risk 8.
 8. Lack of priority of the lien of the Insured Mortgage as to each and every advance made after Date of Policy, and all interest charged thereon, over liens, encumbrances and other matters affecting title, the existence of which are Known to the Insured at:
 - (a) The time of the advance; or
 - (b) The time a modification is made to the terms of the Insured Mortgage which changes the rate of interest charged, if the rate of interest is greater as a result of the modification than it would have been before the modification.This exclusion does not limit the coverage provided in Covered Risk 8.
 9. The failure of the residential structure, or any portion thereof to have been constructed before, on or after Date of Policy in accordance with applicable building codes. This exclusion does not apply to violations of building codes if notice of the violation appears in the Public Records at Date of Policy.

SCHEDULE B

This policy does not insure against loss or damage (and the Company will not pay costs, attorneys' fees or expenses) which arise by reason of:

1. The following existing statutes, reference to which are made part of the ALTA 8.1 Environmental Protection Lien Endorsement incorporated into this Policy following item 28 of Covered Risks: NONE.

**13. SECOND GENERATION EAGLE LOAN POLICY AMERICAN LAND TITLE ASSOCIATION EXPANDED COVERAGE RESIDENTIAL LOAN POLICY (10/13/01)
WITH REGIONAL EXCEPTIONS**

When the American Land Title Association loan policy with EAGLE Protection Added is used as a Standard Coverage Policy and not as an Extended Coverage Policy the exclusions set forth in paragraph 12 above are used and the following exceptions to coverage appear in the policy.

SCHEDULE B

This policy does not insure against loss or damage (and the Company will not pay costs, attorneys' fees or expenses) which arise by reason of:

Part One:

1. Taxes or assessments which are not shown as existing liens by the records of any taxing authority that levies taxes or assessments on real property or by the public records.
2. Any facts, rights, interests, or claims which are not shown by the public records but which could be ascertained by an inspection of said land or by making inquiry of persons in possession thereof.
3. Easements, claims of easement or encumbrances which are not shown by the public records.
4. Discrepancies, conflicts in boundary lines, shortage in area, encroachments, or any other facts which a correct survey would disclose, and which are not shown by public records.
5. Unpatented mining claims; reservations or exceptions in patents or in acts authorizing the issuance thereof; water rights, claims or title to water.
6. Any lien, or right to a lien, for services, labor or material theretofore or hereafter furnished, imposed by law and not shown by the public records.

Part Two:

1. The following existing statutes, reference to which are made part of the ALTA 8.1 Environmental Protection Lien Endorsement incorporated into this Policy following item 28 of Covered Risks: None.

PRIVACY POLICY

We Are Committed to Safeguarding Customer Information

In order to better serve your needs now and in the future, we may ask you to provide us with certain information. We understand that you may be concerned about what we will do with such information – particularly any personal or financial information. We agree that you have a right to know how we will utilize the personal information you provide to us. Therefore, together with our parent company, The First American Corporation, we have adopted this Privacy Policy to govern the use and handling of your personal information.

Applicability

This Privacy Policy governs our use of the information which you provide to us. It does not govern the manner in which we may use information we have obtained from any other source, such as information obtained from a public record or from another person or entity. First American has also adopted broader guidelines that govern our use of personal information regardless of its source. First American calls these guidelines its *Fair Information Values*, a copy of which can be found on our website at www.firstam.com.

Types of Information

Depending upon which of our services you are utilizing, the types of nonpublic personal information that we may collect include:

- Information we receive from you on applications, forms and in other communications to us, whether in writing, in person, by telephone or any other means;
- Information about your transactions with us, our affiliated companies, or others; and
- Information we receive from a consumer reporting agency.

Use of Information

We request information from you for our own legitimate business purposes and not for the benefit of any nonaffiliated party. Therefore, we will not release your information to nonaffiliated parties except: (1) as necessary for us to provide the product or service you have requested of us; or (2) as permitted by law. We may, however, store such information indefinitely, including the period after which any customer relationship has ceased. Such information may be used for any internal purpose, such as quality control efforts or customer analysis. We may also provide all of the types of nonpublic personal information listed above to one or more of our affiliated companies. Such affiliated companies include financial service providers, such as title insurers, property and casualty insurers, and trust and investment advisory companies, or companies involved in real estate services, such as appraisal companies, home warranty companies, and escrow companies. Furthermore, we may also provide all the information we collect, as described above, to companies that perform marketing services on our behalf, on behalf of our affiliated companies, or to other financial institutions with whom we or our affiliated companies have joint marketing agreements.

Former Customers

Even if you are no longer our customer, our Privacy Policy will continue to apply to you.

Confidentiality and Security

We will use our best efforts to ensure that no unauthorized parties have access to any of your information. We restrict access to nonpublic personal information about you to those individuals and entities who need to know that information to provide products or services to you. We will use our best efforts to train and oversee our employees and agents to ensure that your information will be handled responsibly and in accordance with this Privacy Policy and First American's *Fair Information Values*. We currently maintain physical, electronic, and procedural safeguards that comply with federal regulations to guard your nonpublic personal information.

Petitioner's Exhibit 8A

**Fee Owner Authorization from
State of Hawaii
Department of Land and
Natural Resources**

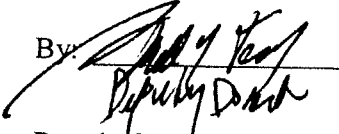
FEE OWNER AUTHORIZATION

Tax Map Key Nos. (3) 7-3-009: 004, 7-3-009: (portion of State Right-of-Way), 7-3-009: 022

TO WHOM IT MAY CONCERN:

This will certify that the **STATE OF HAWAII DEPARTMENT OF LAND AND NATURAL RESOURCES** hereby authorizes NORTH KONA VILLAGE, LLC, developer, and CARLSMITH BALL LLP, developer's attorney, to apply for all necessary permits and approvals relative to the development of said real property, including but not limited to applying for a State Land Use District Boundary Amendment and Change in Zoning of the above referenced property, which includes a portion of a State-owned Right-of-Way and the Mamalahoa Trail.

Dated: MAR - 4 2008 .

By: 
Board of Land and Natural Resources
Its: Chairperson

Tax Map Key Nos. (3) 7-3-009: 004, 7-3-009: (portion of State Right-of-Way), 7-3-009: 022

4842-6577-7154.1.059529-00001

Petitioner's Exhibit 9A

**Affidavit of Service of Petition for Land
Use District Boundary Amendment**

BEFORE THE LAND USE COMMISSION

OF THE STATE OF HAWAII

In the Matter of the Petition of
NORTH KONA VILLAGE, LLC

To Amend the Conservation Land Use District
Boundaries into the Urban Land Use District
for certain lands situate at O'oma 2nd - Kaloko,
North Kona, Island of Hawaii, State of Hawaii;
consisting of approximately 181.169 acres, Tax
Map Key Nos. (3) 7-3-009: 004 (por.), and (3)
7-3-009: (portion of State Right-of-Way)

DOCKET NO. A07-774

AFFIDAVIT OF JENNIFER A. BENCK
ATTESTING TO SERVICE OF PETITION
FOR LAND USE DISTRICT BOUNDARY
AMENDMENT

**AFFIDAVIT OF JENNIFER A. BENCK ATTESTING TO
SERVICE OF PETITION FOR LAND USE DISTRICT BOUNDARY AMENDMENT**

JENNIFER A. BENCK, being first sworn on oath, deposes and says that:

1. Affiant is one of the attorneys for Petitioner, 'O'OMA BEACHSIDE VILLAGE, LLC ("**Petitioner**"), is licensed to practice law in the State of Hawaii, is duly authorized to make this affidavit, and does so upon personal knowledge and belief.

2. This affidavit is made to comply with Section 15-15-50(c) (5) (C), Hawaii Administrative Rules ("**HAR**") for the State of Hawaii Land Use Commission ("**Commission**").

3. On November 23, 2009 Petitioner filed with the Commission an Amended Petition For Land Use District Boundary Amendment ("**Petition**") in Docket No. A07-774.

Pursuant to HAR Section 15-15-48(a), the foregoing Petition and Exhibits 1 through 17 of the Petition were duly served by certified mail or personally served to each of the following persons on November 23, 2009, addressed as follows:

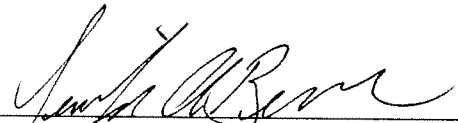
DEL. ABBEY MAYER
 Office of Planning
 State Office Tower, 6th Floor
 235 South Beretania Street
 Honolulu, Hawaii 96813

- DEL. ABE MITSUDA
Office of Planning
State Office Tower, 6th Floor
235 South Beretania Street
Honolulu, Hawaii 96813
- CERT. BRYAN YEE, Esq.
Deputy Attorney General
Hale Auhau, Third Floor
425 Queen Street
Honolulu, Hawaii 96813
- CERT. BOBBY JEAN LEITHEAD-TODD, Director
Planning Department
County of Hawaii
101 Pauahi Street, Suite 3
Hilo, Hawaii 96720
- CERT. LINCOLN ASHIDA, Esq.
Corporation Counsel
County of Hawaii
101 Aupuni Street, Suite 325
Hilo, Hawaii 96720-4262
- CERT. PLANNING COMMISSION
c/o Planning Department
County of Hawaii
101 Pauahi Street, Suite 3
Hilo, Hawaii 96720
- CERT. GREG LIND
US Dept. of the Interior
1111 Jackson St., Suite 735
Oakland, CA 94607
- CERT. LAURA THIELEN
Chairperson
Dept. of Land and Natural Resources
1151 Punchbowl Street, Room 220
Honolulu, Hawaii 96813
- CERT. RUSSELL TSUJI
Land Administrator
Dept. of Land and Natural Resources
1151 Punchbowl Street, Room 220
Honolulu, Hawaii 96813

CERT. GERALDINE K. BELL
Superintendent of the National Park Service
Kaloko- Honokohau National Historical Park
73-4786 Kanalani Street, Suite 14
Kailua-Kona, Hawaii 96740

CERT. ROY A. VITOUSEK III
Cades Schutte
75-170 Hualalai Road / Suite B-303
Kailua-Kona, Hawaii 96740

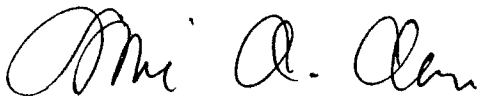
Further affiant sayeth naught.



JENNIFER A. BENCK
Attorney for Petitioner NORTH KONA
VILLAGE, LLC, now known as 'O'OMA
BEACHSIDE VILLAGE, LLC

The attached document: Amended Petition
for Land Use District Boundary Amendment
Verification, Pet's Exhs 1-17, COS,
dated NOV 23 2009,
which consists of eighty-seven
(87) pages (including this page), was
executed by Jennifer A. Benck

who was subscribed and sworn to before me
this 23rd day of November, 2009
in the First Judicial Circuit of the State
of Hawaii.



[Notary Signature]

Printed
Name: LIANE A. AKANA

My commission expires: 01-27-2010

LS
(notary stamp or seal)

Petitioner's Exhibit 10A

Balance Sheet and Income Statement

BALANCE SHEET
As of June 30, 2009

Page 1

Enterprise: 01
Entity: 019 O'oma Beachside Village, LLC

Assets

Cash	\$1,864.61
Land	4,907,652.95
Land-Section 754	4,786,425.00
Capitalized Costs	4,274,326.44
Pre Paid Taxes-Ca FTB	<u>1,600.00</u>
Total Assets	<u>\$13,971,869.00</u>
	=====

Liabilities & Equity

Total Liabilities	<u>0.00</u>
-------------------	-------------

Equity

Member's equity *	13,971,869.00
Retained Earnings	<u>0.00</u>
Total Equity	<u>13,971,869.00</u>
Total Liabilities & Equity	<u>\$13,971,869.00</u>
	=====

* includes \$1m Capital Contribution in funds borrowed in the LLC's name. Repayment is entirely the responsibility of and guaranteed by an LLC member.

INCOMESTATEMENT
For the year ended June 30, 2009

Page 1

Enterprise: 01
Entity: 019 O'Oma Beachside Village, LLC
Department: All

Income	0
Cost of Sales	0
Gross Profit	<u>.00</u>
General & Admin Expenses:	0
Net Income or (Loss)	<u>.00</u>

Petitioner's Exhibit 11A

Notification of Petition Filing

November 23, 2009

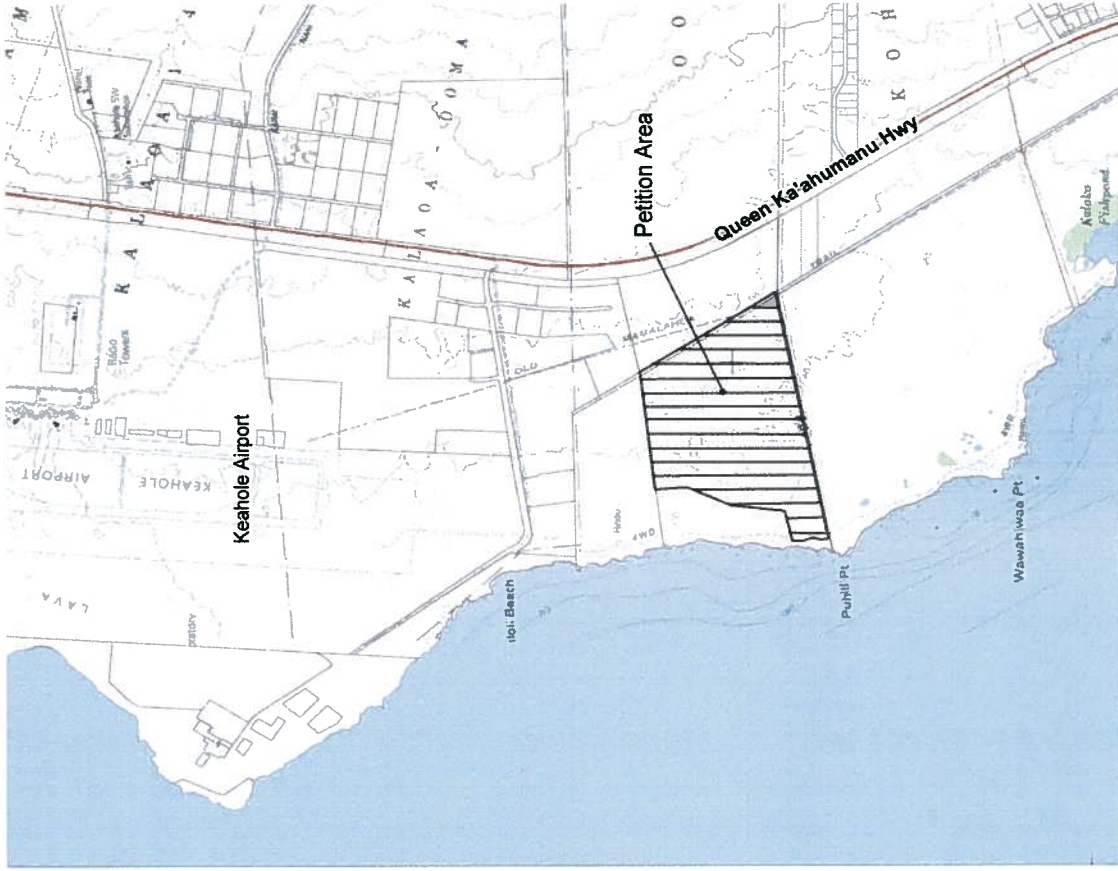
Notification of Petition Filing

This is to advise you that a petition to amend the State Land Use District Boundaries with the following general information has been submitted to the State of Hawaii Land Use Commission ("Commission"):

Docket No: A07-774
Petitioner North Kona Village, LLC now known as 'O'ma Beachside Village, LLC
Address c/o Midland Pacific Homes
7305 Morro Road, Suite 200
Atascadero, California 93422
Landowners: 'O'ma Beachside Village, LLC & State of Hawaii
(Right-of-Way)
Tax Map Key No.: (3) 7-3-009: 004 (portion), & (3) 7-3-009:
(portion of State Right-of-Way)
Location: O'ma 2nd, North Kona, Hawai'i
Requested Reclassification: Conservation to Urban
Acreage: Approximately 181.169
Proposed Uses: Master-planned residential community with mixed uses.

You may review detailed information regarding the petition at the Commission office or the County of Hawai'i Planning Department. The Commission's office is located at 235 S. Beretania Street, Room 406, Honolulu, Hawaii. Office hours are from 7:45 a.m. to 4:30 p.m., Mondays through Fridays. The County of Hawaii Planning Department (Hilo office) is located at 101 Pauahi Street, Suite 3, Hilo, Hawaii 96720. Office hours are from 7:45 a.m. to 4:30 p.m., Monday through Friday.

A hearing on this petition will be scheduled at a future date. If you are interested in participating in the hearing as a public witness, please write or call the Commission office at P.O. Box 2359, Honolulu, Hawaii, 96804-2359; telephone: (808) 587-3822. If you intend to participate in the hearing as an intervenor, pursuant to § 15-15-52, Hawaii Administrative Rules, you should file a Notice of Intent to Intervene with the Commission within 30 days of the date of this Notification of Petition Filing. Please contact the Commission office for further information.



Petitioner's Exhibit 12A

**Affidavit of Service of Notification of
Petition Filing**

BEFORE THE LAND USE COMMISSION

OF THE STATE OF HAWAII

In the Matter of the Petition of
NORTH KONA VILLAGE, LLC

To Amend the Conservation Land Use District
Boundaries into the Urban Land Use District
for certain lands situate at O'oma 2nd - Kaloko,
North Kona, Island of Hawaii, State of Hawaii;
consisting of approximately 181.169 acres, Tax
Map Key Nos. (3) 7-3-009: 004 (por.), and (3)
7-3-009: (portion of State Right-of-Way)

DOCKET NO. A07-774

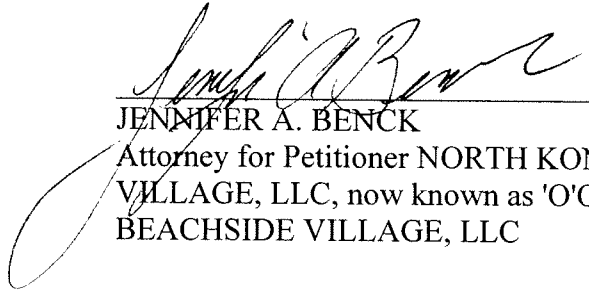
AFFIDAVIT OF JENNIFER A. BENCK
ATTESTING TO SERVICE OF THE
NOTIFICATION OF PETITION FILING

**AFFIDAVIT OF JENNIFER A. BENCK
ATTESTING TO SERVICE OF THE NOTIFICATION OF PETITION FILING**

JENNIFER A. BENCK, being first sworn on oath, deposes and says that:


1. Affiant is one of the attorneys for Petitioner, 'O'OMA BEACHSIDE VILLAGE, LLC ("**Petitioner**"), is licensed to practice law in the State of Hawaii, is duly authorized to make this affidavit, and does so upon personal knowledge and belief.
2. This affidavit is made to comply with Section 15-15-50(d), Hawaii Administrative Rules ("**HAR**") for the State of Hawaii Land Use Commission ("**Commission**").
3. On November 23, 2009 Petitioner filed with the Commission an Amended Petition For Land Use District Boundary Amendment ("**Petition**") in Docket No. A07-774.
4. On November 23, 2009, the same day that the Petition was submitted to the Commission and pursuant to HAR Section 15-15-50(d), Petitioner sent a Notification of Petition Filing to persons included on the statewide and Hawaii County mailing lists provided to Petitioner by the Commission on or about August 17, 2009, copies of which are attached hereto as Exhibits "A" and "B" respectively.

Further affiant sayeth naught.


JENNIFER A. BENCK
Attorney for Petitioner NORTH KONA
VILLAGE, LLC, now known as 'O'OMA
BEACHSIDE VILLAGE, LLC

The attached document: Amended Petition
for Land Use District Boundary
Amendment; Verification; Pet Exhs 1-17,
dated ^{cos} NOV 23 2009,
which consists of eighty-seven
(87) pages (including this page), was
executed by Jennifer A. Benck

who was subscribed and sworn to before me
this 23rd day of November, 2009
in the First Judicial Circuit of the State
of Hawaii.



[Notary Signature]

(notary stamp or seal) ^{LS}

Printed
Name: LIANE A. AKANA

My commission expires: 01-27-2010

UH Director of Capital Improvements
1951 East West Road
Honolulu, Hawaii 96822

Anthony J.H. Ching
State of Hawaii
Hawaii Community Development Authority
677 Ala Moana Boulevard, Suite 1001
Honolulu, Hawaii 96813

STATEWIDE MAILING LIST
Last Updated: 07/24/09

Earth Justice Legal Defense Fund
Austin Building, Suite 400
223 South King Street
Honolulu HI 96813

Mr. Perry Artates
Hawaii Operating Engineers
95 Lono Avenue, Suite 104
Kahului HI 96732-1610

Ashford & Wriston Library
P. O. Box 131
Honolulu HI 96810

Associated Press
500 Ala Moana Boulevard, Suite 7-590
Honolulu, Hawaii 96813

Rose Marie H. Duey
Alu Like, Inc., Maui Island Center
1977 Kaohu Street
Wailuku HI 96793

Mr. Ikuto Taketa
c/o Hawaii Irrigation & Supply
803 Mapunapuna Street
Honolulu HI 96819

Michael J. Belles, Esq.
Belles Graham Proudfoot & Wilson
4334 Rice Street, Suite 202
Lihue HI 96766

Gene Zarro
22 Ulunui Place
Pukalani, HI 96768

Gary L. Blaich, M.D.
P. O. Box 1434
Kilauea HI 96754

Mr. James Garrigan
P O Box 3143
Kailua-Kona, Hawaii 96745

Mr. Kenneth Okamura
641 Polipoli Road
Kula, Hawaii 96790

James S. Greenwell
Lanihau Partners L.P.
3465 Waialae Avenue, Suite 260
Honolulu HI 96816

Patrick Borge, Sr.
536 Haawina Street
Paia, Hawaii 96779-9609

P. Roy Catalani
Young Brothers, Ltd.
Pier 40 – P. O. Box 3288
Honolulu, HI 96801

Building Industry Association of Hawaii
1727 Dillingham Blvd.
Honolulu HI 96819

Building Trades Council
Gentry Pacific Design Ctr. Ste. 215A
560 N. Nimitz Hwy. #50
Honolulu HI 96817

Roy A. Vitousek III
Cades Schutte Fleming & Wright
75-170 Hualalae Road, Ste. B-303
Kailua-Kona HI 96740

Ms. Phyllis Cayan
99-060 Kauhale St, Apt. 607
Aiea HI 96701

Mr. Charles Trembath
4152 Palaumahu
Lihue HI 96766

Surety Kohala Corporation
P. O. Box 249
Hawi HI 96719

Mr. Bruce Tsuchida
Townscape
900 Fort Street Mall, #1160
Honolulu HI 96813

Ms. Meredith J. Ching
Alexander & Baldwin, Inc.
P. O. Box 3440
Honolulu HI 96801

Council Services Administration
Kauai County Council
4396 Rice Street, #206
Lihue, HI 96766

Ms. K. Chun
P. O. Box 3705
Honolulu HI 96811

City Desk Clerk-Public Hearings
Honolulu Star Bulletin
500 Ala Moana Boulevard, Unit 210
Honolulu, Hawaii 96813-4914

Ms. Eleanor Mirikitani
c/o Waikoloa Land Co.
150 Waikoloa Beach Drive
Waikoloa HI 96738

Mr. David Penn
P. O. Box 62072
Honolulu HI 96839

Castle & Cooke Hawaii
100 Kahelu Avenue, 2nd Floor
Mililani, Hawaii 96789

Mr. Lunakanawai Hauanio
P. O. Box 871
Capt. Cook HI 96704

Alan Kaufman, DVM
P O Box 297
Kula, HI 96790

Karen Piltz
Chun Kerr Dodd Beaman & Wong
745 Fort Street, 9th Floor
Honolulu, HI 96813

Mr. David Rae
The Estate of James Campbell
1001 Kamokila Boulevard
Kapolei HI 96707

United States Marine Corps
Commander, Marine Forces Pacific
Attn: G4. Box 64118
Camp H.M. Smith, Hawaii 96861-4118

David Kimo Frankel
Chair, Sierra Club, Hawai'i Chapter
P. O. Box 1185
Volcano HI 96785

U.S. Fish and Wildlife Service
300 Ala Moana Blvd., Rm. 3-122
Honolulu HI 96813

Department of the Army
Directorate of Public Works
Attn: Planning Division
Schofield Barracks, Hawaii 96857-5013

Mr. Albert K. Fukushima
1841 Palamoi Street
Pearl City HI 96782

Mr. Ian Costa, Director
Planning Department - Kauai
4444 Rice Street, Suite 473
Lihue HI 96766

J. Gillmar
P. O. Box 2902
Honolulu HI 96802

Lynn Kaho`ohalahala
124 A Fleming Road
Lahaina, HI 96761

Isaac Hall, Esq.
2087 Wells Street
Wailuku HI 96793

The Hallstrom Group, Inc.
Suite 1350
1003 Bishop Street
Honolulu HI 96813

Ms. Esther Ueda
98-1784-B Kaahumanu Street
Pearl City HI 96782

Real Property Division
County of Kauai
4444 Rice Street
Lihue HI 96766

Mr. Randy Hara
C&C Department of Planning & Permitting
650 South King Street
Honolulu HI 96813

Hawaii's Thousand Friends
25 Malunui Ave., Suite 102, PMB 282
Kailua HI 96734

Jacqui Hoover, President
Hawaii Leeward Planning Conference
P. O. Box 2159
Kamuela HI 96743

Mr. Gordon Pang
Honolulu Advertiser
605 Kapiolani Boulevard
Honolulu, HI 96813

Mr. Norman Hayashi
563 West Kawaiiani Street
Hilo HI 96720

Mrs. Jan Higa & Company
3171 Waiialae Avenue
Honolulu HI 96816

Department of the Navy
Commander in Chief, U.S. Pacific Fleet
Commander in Chief
250 Makalapa Drive
Pearl Harbor, HI 96860-3131

U.S. Pacific Command
Commander in Chief
Box 64028
Camp H.M. Smith, Hawaii 96861-4028

Commander
Navy Region Hawaii
850 Ticonderoga Street, Suite 110
Pearl Harbor HI 96860-5101

Lawrence Ing, Esq.
Ing, Horikawa & Jorgensen
2145 Wells Street, Suite 204
Wailuku, Hawaii 96793-2222

Mrs. Dora Horikawa
99-645 Kaulainaahee Place
Aiea HI 96701-3542

William E. Wankett, Inc.
1110 University Ave., #508
Honolulu, HI 96826-1508

Walter Mensching
RSS Ltd.
1658 Liholiho Street, Suite 306
Honolulu, Hawaii 96822

Mr. Alexander C. Kinzler
1100 Alakea Street Ste. 2900
Honolulu, HI 96813-2833

Roy A. Vitousek, III
Cades Schutte
75-170 Hualalai Rd., Ste 303
Kailua-Kona, HI 96740

Jill K. Veles, Legal Assistant
Oshima, Chun, Fong & Chung
841 Bishop Street, #400
Honolulu HI 96813

Isaac Fiesta
ILWU Local 142 - Hawaii Division
100 W. Lanikaula Street
Hilo, HI 96720

Libbie Kamisugi
2500 Aha Aina Place
Honolulu HI 96821

Collette M. Sakoda
Environmental Planning Solutions LLC
945 Makaiwa Street
Honolulu, HI 96816

Dwight Kauahikaua
Kawaiahao Plaza, Suite 108
567 South King Street
Honolulu HI 96813

PBR Hawaii
1719 Haleloki Street
Hilo, HI 96720

Verizon Hawaii, Inc.
Attn: Real Property Section
P O Box 2200
Honolulu, HI 96841

Lianne Ventura
KSD Hawaii
8 Kiopaa Street, Suite 201
Pukalani, HI 96768

Cheryl Izuka, Senior Title Officer
Title Guaranty of Hawaii, Inc.
235 Queen Street
Honolulu, Hawaii 96813

Attn.: Ms. Wanda Wehr
KITV News 4
801 S. King Street
Honolulu HI 96813

West Hawaii Today
Attn: Reed Flickinger
P. O. Box 789
Kailua-Kona HI 96745-0789

Mr. Chester Koga
R.M. Towill Corporation
2024 North King Street, Suite 200
Honolulu, Hawaii 96819

Benjamin A. Kudo, Esq.
Imanaka Kudo & Fujimoto
745 Fort Street, 17th Floor
Honolulu HI 96813

Mr. Kenneth Kupchak
Damon Key Bocken Leong & Kupchak
1003 Bishop Street, #1600
Honolulu HI 96813

Burt Lau, Esq.
999 Bishop St., Ste. 2600
Honolulu HI 96813

Land Use Research Foundation of Hawaii
700 Bishop Street, Suite 1928
Honolulu HI 96813

Dain P. Kane
Maui County Council
200 South High Street
Wailuku HI 96793

Pat Lee & Associates, Inc.
45-248A Pahikaua Place
Kaneohe HI 96744

League of Women Voters
49 South Hotel Street, Rm. 314
Honolulu HI 96813

Dickson C. H. Lee, Esq.
Takushi Wong Lee & Yee
841 Bishop Street, Suite 1540
Honolulu, Hawaii 96813

Michael Y. M. Loo
Princeville Corporation
P. O. Box 223040
Princeville HI 96722-3040

Life of the Land
76 North King Street, Suite 203
Honolulu HI 96817

Steven S.C. Lim, Esq.
Carlsmith Ball
121 Waianuenu Avenue
Hilo HI 96720

Crockett & Nakamura
38 S. Market Street
Wailuku, Hawaii 96793

Mr. Greg Apa, President
Leeward Land LLC
P. O. Box 2862
Waianae, Hawaii 96792

Benjamin M. Matsubara, Esq.
C.R. Kendall Building, 8th Floor
888 Mililani Street
Honolulu HI 96813

Sue White
1118 Maunawili Road
Kailua HI 96734

Metro Calendar
P. O. Box 3110
Honolulu HI 96802

William W.L. Yuen, Esq.
Pacific Tower, Suite 2700
1001 Bishop Street
Honolulu HI 96813

Attn: Bonnie Stifel
McCorrison Miller Mukai MacKinnon
P. O. Box 2800
Honolulu HI 96803-2800

Bobby Jean Leithed-Todd Director
County of Hawaii, Planning Department
101 Pauahi Street, Suite 3
Hilo, Hawaii 96720

Pat Tummons
72 Kapiolani Street
Hilo, Hawaii, 96720

Jesse K. Souki, Esq.
Department of the Corporation Counsel
City and County of Honolulu
530 S. King Street, Rm. 110
Honolulu, Hawaii 96813

Real Property Tax Division, Dept of Finance
County of Hawaii
101 Aupuni Street, Suite 4
Hilo, HI 96720-4224

Frances Mossman
P. O. Box 31069
Honolulu HI 96820-1069

Franklin Mukai, Esq.
McCorrison Miller Mukai MacKinnon
P. O. Box 2800
Honolulu HI 96803-2800

National Resources Conservation Svc.
Attn: Chris Smith
P. O. Box 50004
Honolulu HI 96850

Ms. Heide Meeker
Dept. of Education/Facilities & Support Svcs
Kalani High School
4680 Kalaniana'ole Hwy #TB1A
Honolulu, Hawaii 96821

Native Hawaiian Legal Corporation
1164 Bishop Street, #1205
Honolulu HI 96813

Nathan Natori, Esq.
1360 Pauahi Tower
1001 Bishop Street
Honolulu HI 96813

Natural Resources Conservation Svc.
300 Ala Moana Blvd., Room 4-118
Honolulu HI 96850

Wilson Okamoto & Associates
Attn: Earl Matsukawa
1907 S. Beretania Street
Honolulu, HI 96826

Julian Ng, Inc.
P. O. Box 816
Kaneohe HI 96744-0816

Mr. John M. White
Hawaii Land Company
P. O. Box 10
Honolulu HI 96810

Ms. Donna Ann Kamehaiku Ono
He'e'ia Historical Society
46-522 Haiku Plantations Drive
Kaneohe HI 96744

Peter Yukimura
P. O. Box 1031
Lihue, HI 96766

Mr. Kent Matsuo
James Campbell Co., LLC
1001 Kamokila Boulevard, Ste 200
Kapolei HI 96707

Mr. Kyle Chock, Executive Director
Pacific Resource Partnership
1001 Bishop Street, Suite 1501
Honolulu HI 96813

DOT Highways / Oahu District Office
Engineer Program Manager
727 Kakoi Street
Honolulu, HI 96819

Ms. Rhoda Libre
P. O. Box 246
Kaunakani HI 96747

PBR Hawaii
Pacific Tower, Suite 650
1001 Bishop Street
Honolulu HI 96813

The Pele Defense Fund
P. O. Box 404
Volcano HI 96785

Mr. Jeff Hunt, Director
Planning Department - County of Maui
250 South High Street
Wailuku HI 96793

Mr. Mark Murakami
Damon Key Leong Kupchak Hastert
1003 Bishop Street, #1600
Honolulu, HI 96813

Julie Ann Miyashiro
3247 Catherine St.
Honolulu, HI 96815

Real Property Tax Division
Department of Finance - County of Hawaii
101 Pauahi Street, Suite No. 4
Hilo HI 96720

Mr. Richard Poirier
95-584 Naholoholo
Mililani HI 96789

Prosser Realty, Inc.
4379 Rice Street
Lihue HI 96766

Sierra Club, Kauai Group
P. O. Box 3412
Lihue HI 96766

Mr. Dan Yasui
A & B Properties, Inc.
P. O. Box 3440
Honolulu HI 96801-3440

Ms. Holly Hackett
P.O. Box 755
Honolulu, Hawaii 96808

Mr. Abbey Seth Mayer, Director
Office of Planning
P. O. Box 2359
Honolulu HI 96804-2359

Ms. Brenda Salgado
KGMB
1534 Kapiolani Boulevard
Honolulu HI 96814

Sierra Club, Hawai'i Chapter
P. O. Box 2577
Honolulu HI 96803

Doreen Keomalo
282960 Komula St. #G41
Pepeekeo, HI 96783

Mr. Robert J. Smolenski
841 Bishop Street, Ste. 1717
Honolulu HI 96813-3970

Mr. Steven Strauss
P. O. Box 11517
Hilo HI 96720

Wesley R. Segawa & Associates
736 South St. #206
Honolulu, HI 96813

Mr. Bruce A. Coppa
Communications Pacific
TOPA Financial Center
Fort Street Tower, Penthouse
745 Fort Street
Honolulu, HI 96813

Claudia Rohr
369 Nene St.
Hilo, HI 96720

Steven Lee Montgomery, Ph.D.
94-610 Palai Street
Waipahu, Hawaii 96797-4535

Frank Carlos
398 Puiwa Road
Honolulu, HI 96817

Randall Sakumoto, Esq.
McCorriston Miller Mukai MacKinnon LLP
P. O. Box 2800
Honolulu, Hawaii 96803-2800

Brenda Luana Machado Lee
P. O. Box 133
Captain Cook, Kona, Hawaii 96704

Laura Kodama
Castle and Cooke
100 Kahelu Avenue, 2nd Floor
Mililani, HI 96789

C. Mike Kido
External Affairs
The Pacific Resource Partnership
1001 Bishop Street, ASB Tower #1501
Honolulu, HI 96813

Irene Anzai
Rush Moore LLP
737 Bishop Street, Suite 2400
Honolulu, HI 96813

Stanford S. Carr, President
Stanford Carr Development LLC
1100 Alakea Street, 27th Floor
Honolulu, HI 96813

Bill Mills, Chairman
The Mills Group
1100 Alakea Street, Suite 2200
Honolulu, HI 96813

DOT Highways / Hawaii District Office
Engineer Program Manager
50 Makaala Street
Hilo, HI 96720

Kyong-Su Im
Paul Johnson Park & Niles
ASB Tower, Suite 1300
1001 Bishop Street
Honolulu, Hawaii 96813

DOT Highways / Maui District Office
Engineer Program Manager
650 Palapala Drive
Kahului, HI 96732

Department of Transportation
Highways Division
Kauai District Office
1720 Haleukana Street
Lihue, Hawaii 96766

Eric Maehara, Esq.
2752 Kaaha Street, Unit 307
Honolulu, HI 96826

Curtis T. Tabata
Matsubara - Kotake
A Law Corporation
888 Mililani Street, Eighth Floor
Honolulu, Hawaii 96813

Chairman - Planning Commission
County of Kauai
4444 Rice Street, Suite 473
Lihue HI 96766

Christopher J. Bennett, Esq.
Watanabe Ing LLP
999 Bishop Street, 23rd Floor
Honolulu, HI 96813

DOT - Airports Administrator
Inter-Island Terminal, Suite 700
Honolulu International Airport
400 Rodgers Blvd.
Honolulu, HI 96819

Mr. Abe Mitsuda
Office of Planning
P. O. Box 2359
Honolulu HI 96804-2359

Mary Lou Kobayashi
Office of Planning
P. O. Box 2359
Honolulu HI 96804-2359

Lance Tauoa
DOH-Environmental Planning, Rm. 312
919 Ala Moana Boulevard
Honolulu HI 96814

Department of Transportation
Harbors Division
79 South Nimitz Highway
Honolulu HI 96813

Director - OEQC
235 South Beretania St., Rm. 702
Honolulu HI 96813

Mr. Theodore Liu, Director
DBEDT
P. O. Box 2359
Honolulu HI 96804-2359

Mr. Ronald F. Tsuzuki
Highways Division, Planning Branch
869 Punchbowl Street
Honolulu, HI 96813

Deputy Director
Department of Transportation
869 Punchbowl Street
Honolulu HI 96813

Bryan Yee, Deputy Attorney General
Commerce & Economic Development Div
Department of Attorney General
425 Queen Street
Honolulu, Hawaii 96813

HIARNG Environmental Office
3949 Diamond Head Road
Honolulu, HI 96816-4495

Scot Urada
DOT Design Branch, Highways Division
601 Kamokila Blvd., Room 688-A
Kapolei HI 96707

Glenn Soma
DOT Transportation Planning Office
869 Punchbowl Street
Honolulu, HI 96813

Department of Land and Natural Resources
Land Division, Coastal Lands Program
P O Box 621
Honolulu, HI 96809-0621

Executive Director
HHFDC
677 Queen Street, Suite 300
Honolulu HI 96813

Mr. Gordon Matsuoka
DAGS - Public Works Division
P. O. Box 119
Honolulu HI 96810

Chairman of the Board
Dept of Agriculture
1428 South King Street
Honolulu HI 96814

HHFDC
Planning & Evaluation Office
677 Queen Street, Suite 300
Honolulu HI 96813

Dwight Vicente
2608 Ainaloa Dr.
Hilo, HI 96720

Michael D. Fomby, Deputy Director
DOT Harbors Division
79 S. Nimitz Highway
Honolulu, HI 96813-4898

Major General Edward L. Correa, Jr.
Department of Defense
3949 Diamond Head Road
Honolulu HI 96816

Diane E. Erickson, Esq.
Deputy Attorney General
425 Queen Street
Honolulu HI 96813

Commission on Water Resource Management
Dept. of Land & Natural Resources
1151 Punchbowl Street, Room 227
Honolulu HI 96813

Land Management Division
Dept. of Land & Natural Resources
1151 Punchbowl Street, Room 131
Honolulu, HI 96813

Dept. of Land & Natural Resources
Chairperson's Office
1151 Punchbowl Street, Room 130
Honolulu HI 96813

Deputy Director
Department of Land and Natural Resources
P.O. Box 621
Honolulu, Hawaii 96809

Dept. of Hawaiian Home Lands
P. O. Box 1879
Honolulu HI 96805

The Honorable Linda Lingle
Governor, State of Hawaii
State Capitol
Honolulu HI 96813

Ms. Sara Collins
DLNR - Historical Preservation Division
601 Kamokila Blvd., Room 555
Kapolei HI 96707

Representative Cindy Evans
7th District
State Capitol, Room 311
Honolulu, Hawaii 96813

Lincoln Ashida, Esq.
County of Hawaii
101 Aupuni Street, Suite 325
Hilo HI 96720

Geri Bell, Superintendent
c/o Sallie Beavers
Kaloko-Honokohau National Park
73-4786 Kanalani Street #14
Kailua-Kona HI 96740

Mr. Milton D. Pavao, Manager
Hawaii County Dept of Water Supply
345 Kekuanaoa Street, Suite 20
Hilo, HI 96720-4388

Scott Carter
P. O. Box 384031
Waikoloa HI 96738

Anthony Ching Ako
PO Box 943
Kapaa, Hawaii 96755

Mr. Ralph Farmer
75-5865 Waiua Road, #F-1
Kailua-Kona HI 96740

Mr. H. Foster
68-1723 Hulukoa Place
Waikoloa HI 96738

Ms. Phyllis Fujimoto
224 Haili Street
Hilo HI 96720

Governor's Liaison Office-West Hawaii
75-5722 Kuakini Hwy, Suite 215
Kailua-Kona HI 96740-1723

Mr. Bill Graham
Life of the Land
P. O. Box 155
Hawi HI 96719

Ms. Judith Graham
P. O. Box 1366
Kamuela HI 96743

Virginia Isbell
P O Box 926
Kealahou, HI 96750

George Robertson
Puako Community Association
P. O. Box 44490
Kawaihae, HI 96743

Lisa Wong, GIS Analyst
25 Aupuni St., Rm. 102
Hilo, HI 96720

Hawaii County Civil Defense Agency
920 Ululani Street
Hilo HI 96720

Hawaii Tribune-Herald
Attn: Jason Armstrong
P. O. Box 767
Hilo HI 96721

Ruth Bass
P. O. Box 690
Naalehu, HI 96772

Mr. Mahealani Pai
Pai 'Ohana
P. O. Box 251
Kailua-Kona HI 96745

Ms. Ku'uilei Keakealani
P. O. Box 6043
Kamuela HI 96743

Jerry F. Halverson
78-7206 Puuloa Road
Kailua-Kona, HI 96740

Mr. Jack Kelly
P. O. Box 917
Capt. Cook HI 96704-0917

Planning Commission
County of Hawaii
101 Pauahi Street, Suite 3
Hilo HI 96720

Hector Esparza
P. O. Box 81
Naalehu, HI 96772

Kona Kohala Chamber of Commerce
75-5737 Kuakini Highway, #208
Kailua-Kona HI 96740

Bobby Jean Leithead-Todd
HCCPH Community Assn.
118 Lukia Street
Hilo HI 96720

Ms. Leina'ala Lightner
P. O. Box 684
Kailua-Kona HI 96745

Mr. Myles Miyasato
c/o H.O.E.I.S.F.
50 Waiuanue Avenue
Hilo HI 96720

Ross Engineering, Inc.
77-6219 A Kaumalumu
Holualoa HI 96725

Ms. Amy G. Self
Office of the Corporation Counsel
101 Aupuni Street, Suite 325
Hilo, HI 96720

HAWAII MAILING LIST
Updated: 05/19/09

EXHIBIT B

Ms. Mikahala Roy
P. O. Box 596
Kailua-Kona HI 96745

Lukela Ruddle
Office of Hawaiian Affairs
162 Baker Ave. #A
Hilo HI 96720-4869

Lesley Tyler
73-1305 Hiolani Street
Kailua-Kona HI 96740-9344

Aaron Ueno
Hawaii District Health Office
P O Box 916
Hilo, HI 96721

Ms. Kim Magnuson
P.O. Box 567
Papaikou, Hawaii 96781

Julie Pasquale
P. O. Box 743
Naalehu, HI 96772

Council Member K. Angel Pilago
Kailua Trade Center
75-706 Hanama Place #109
Kailua-Kona, HI 96740

Tsukazaki Yeh & Moore
85 W. Lanikaula Street
Hilo, HI 96720

Kahua Ranch, Ltd./Ponoholo Ranch, Ltd
P O Box 1879
Kamuela, HI 96743

Hawaii Electric Light Co., Inc.
Attn: Land Division
P O Box 1027
Hilo, HI 96720

Sharon Weisner
Brooks Tom Porter & Quitiquit, LLP
75-1000 Henry Street , Suite 208
Kailua-Kona, Hawaii 96740

Dwight Vicente
2608 Ainaola Drive
Hilo, Hawaii 96720

McClellan Honokohau Properties
P. O. Box 3000
Kailua-Kona HI 96745-3000

Ms. Ruby McDonald
Office of Hawaiian Affairs
75-5706 Hanama Pl., #107
Kailua-Kona HI 96740

Mr. Ed Johnston
P. O. Box 636
Pepeekeo, Hawaii 96783

Ms. Sunita Przewlocki
27-2246 Hawaii Belt Road
Papaikou HI 96781

Ms. Barbara McDonnell
Palamanui, LLC
P.O. Box 9007
Kailua Kona, HI 96745

Michele Costa
P O Box 593
Papaikou, HI 96781

Ms. Margaret Johnson
P.O. Box 551
Papaikou, Hawaii 96881

Ms. Kim Magnuson
Box 567
Papaikou, Hawaii 96781

Dana Remy
P O Box 391060
Keauhou, Hawaii 96739

Tracy Solomon
P O Box 391060
Keauhou, Hawaii 96739

Greg Gauthier
ILWU
100 W. Lanikaula Street
Hilo, Hawaii 96720

Mr. John Bansemer
Bansemer Realty
P O Box 391172
Kailua-Kona, Hawaii 96740

Sam Walker, Sr.
P O Box 9031
Kailua-Kona, Hawaii 96745

Mr. Keoni Paoa
P O Box 469
Holualoa, Hawaii 96725

Mr. Kulike Chong
P O Box 6173
Kamuela, HI 96743

Gene Paul Rivera
74-4932 D Mamalahou Hwy
Holualoa, HI 96725

Randy Vitousek
75-170 Hualalai Road, #B303
Kailua-Kona, HI 96740

George Robertson
P O Box 44490
Kamuela, Hawaii 96743

Albert A. Nakaji
27-319 Kaieie Homestead Rd.
Papaikou, HI 96781

Howard Kihune
2530 Kekaa Drive, C-1
Lahaina, HI 96761

Janice Palma-Glennie
P O Box 4849
Kailua-Kona, Hawaii 96745

Petitioner's Exhibit 13

**Market and Economic/Fiscal Impact
Assessment Updates for
O'oma (May 2009)**

Market and Economic/Fiscal Impact Assessment Updates for `O`oma

May 2009

Prepared by Mikiko Corporation
for `O`oma Beachside Village, LLC

This report updates the market and economic/fiscal impact assessments for residential and commercial uses at the proposed `O`oma Beachside Village (`O`oma) community in North Kona, on the Island of Hawaii. This update was prepared to address long-term population projections that became available after completion of the original market report for `O`oma, as well as updated research on planned and entitled inventories and residential sales prices. It also reflects a slightly delayed anticipated project start date from that estimated two years ago.

While `O`oma's overall development concept and plan has not been altered, the above developments result in new assessments for residential unit pricing and absorption. These changes in turn result in some changes in the assessment of economic and fiscal impacts, as will be explained below.

Background

Island Population

Mikiko Corporation's (Mikiko's) December 2007 market assessment¹ for `O`oma utilized the latest Island of Hawaii population projections then available from the State of Hawaii, Department of Business, Economic Development and Tourism (DBEDT).² It also considered the County of Hawaii's projections as stated in its 2001 General Plan; and other projections and estimates as were stated therein.

¹ Mikiko Corporation, "Market Assessment for `O`oma Beachside Village," December 2007. This document may also be referred to herein as "the prior market study" or "the 2007 study."

² State of Hawaii, Department of Business, Economic Development and Tourism, Research and Economic Analysis Division, "Population and Economic Projections for the State of Hawaii to 2030," (DBEDT 2030 Series), August 2004.

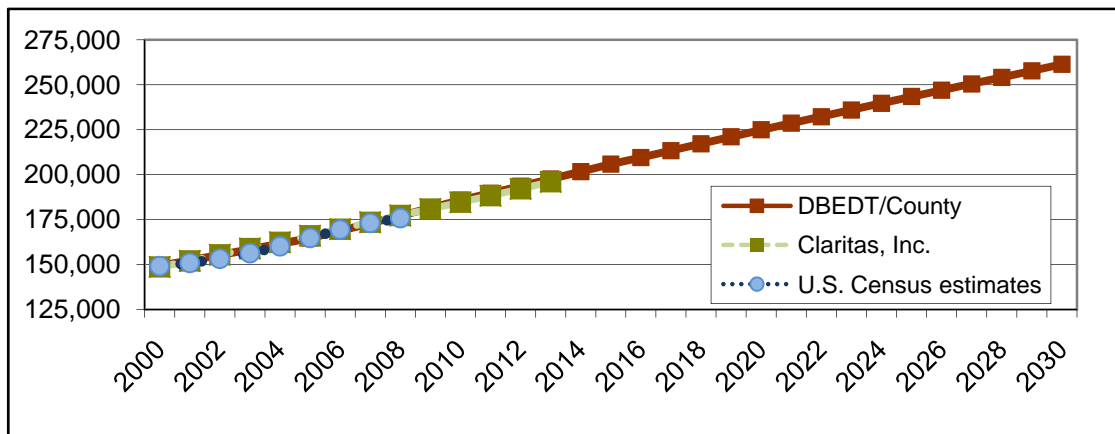
However, in January 2008, DBEDT revised its population projection series³ and Hawaii County (County) adopted DBEDT's new series as its long-term view. At 2030, DBEDT now projects 14% more population on the Big Island than had been anticipated in the 2004 series. It now projects an Island population of 261,340 by 2030. This would be 49% more population than the 175,784 estimated by the Census for 2008.⁴

DBEDT's revised projections reflect ongoing estimated increases in Big Island population through 2007, and slowing growth on Oahu. They also reflect the State's belief that Hawaii's future population growth will continue to be more rapid on the neighbor islands than on Oahu, with the Big Island experiencing the highest sustained rates of growth. From 2005 to 2035, DBEDT projects Hawaii Island resident population increases averaging 1.8% per year, compared to 0.7% on Oahu, 1.3% in Maui County and 1.1% in Kauai County.

In addition to the updated DBEDT and Census information, Mikiko obtained new estimates and projections from Claritas, a private vendor that provides current year estimates and 5-year projections.⁵

The three population estimate or projection series considered in this updated assessment are depicted below.

Resident Population – Island of Hawaii



Sources: State of Hawaii, 2008; Claritas, Inc., 2009; U.S. Census Bureau, 2007, 2008 and 2009.

³ State of Hawaii, Department of Business, Economic Development and Tourism, Research and Economic Analysis Division, "Population and Economic Projections for the State of Hawaii to 2035," (DBEDT 2035 Series), January 2008.

⁴ U.S. Census Bureau, May 2009.

⁵ Claritas, Inc., March 2009.

Area Population

Using the DBEDT/County long-term Island-wide projections, Mikiko developed projections for population within a Competitive Residential Market Area (CRMA) of most relevance to `O`oma's residential market assessment. This area was defined as Census Tracts 215.01 and 217.01, which are referred to herein as North Kona-North and South Kohala-Waikoloa, respectively.⁶ As in the 2007 study, in developing projections for the CRMA, Mikiko assumed that housing opportunities within this area should approach alignment with its jobs base. As of 2006, 21% of the Island's employees were reported to work in the CRMA, while the area was the place of residence for only 12% of the Island's population.⁷

In this update, the CRMA is targeted to house 21% of the Island's population in 2020, and 23% by 2030. The assumption for 2020 is unchanged from that used in Mikiko's 2007 projection, while the 2030 assumption is lower than that employed previously (the CRMA had been projected at 26% of Island population.)

These updated projections show a 4.5% annual population growth between 2008 and 2030, resulting in a 2030 area population of 60,100 persons. These compare to the 4.3% growth projected previously, which resulted in 58,300 residents in the prior market study.

Area Households

The CRMA population levels are translated into households based on Claritas' estimates of 2008 and 2013 average household sizes within the two census tracts, and historical and anticipated trends. According to Claritas, North Kona-North households averaged 2.99 persons in 2008, while those in South Kohala-Waikoloa averaged 2.69 persons. Mikiko's updated projections assume that average household sizes within the CRMA continue to decline, but at a slower rate than historically and than projected previously.

Mikiko projects average household sizes in the two CRMA tracts at 2.7 and 2.6, respectively, in 2030. These represent 0.6% and 0.3% annual rates of decline in average household size over the period, for North Kona-North and South Kohala-Waikoloa, respectively. This compares to 0.7% and 0.3% per annum declines assumed in the 2007 study.

The updated projections show 22,600 households within the CRMA in 2030, about 2% more than projected in the prior market study. This estimate is more conservative than the prior

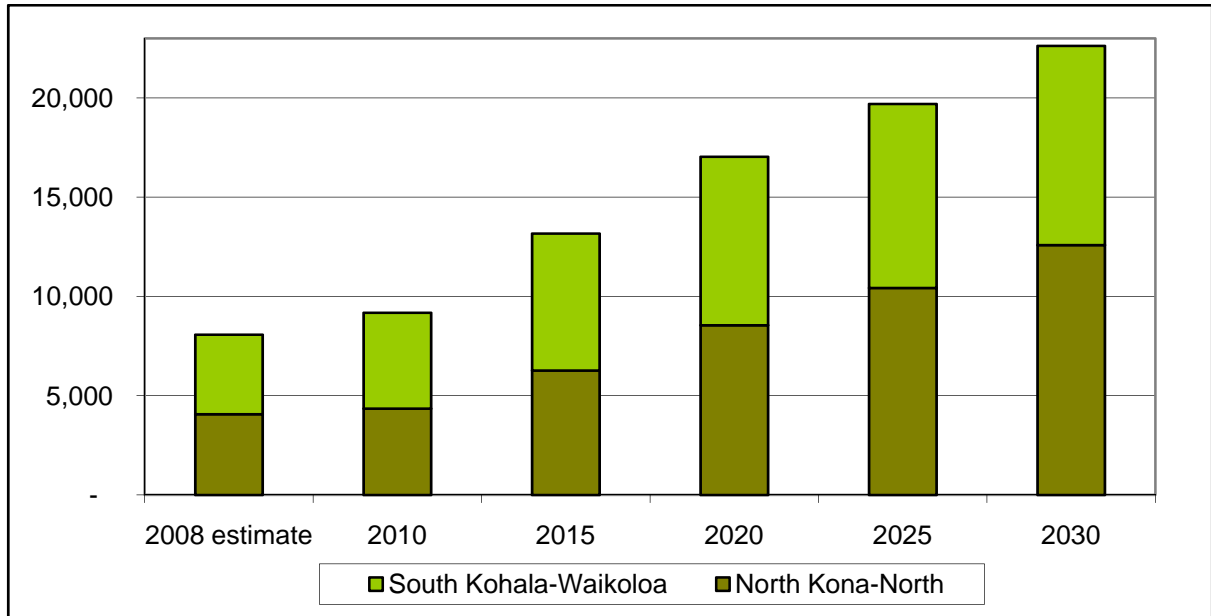
⁶ CT 215.01 is the northern part of the North Kona District, generally to Henry Road. It includes `O`oma and surrounding areas such as Kealakehe and Kaloko, but excludes Kailua-Kona and areas southward. CT 217.01 is the southern part of the South Kohala District, generally from Waikoloa Beach Resort to Mauna Kea Resort, and mauka to Waikoloa Village. It excludes Waimea. See prior market study for further information.

⁷ See prior market study, page 18.

one, due to the lower assumption regarding percent of population within the CRMA, coupled with the more gradual assumption regarding declining household size.

Projected households in the CRMA, as updated, are summarized below.

Resident Households in the Competitive Residential Market Area



Source: Mikiko Corporation, 2009.

Residential Price Trends

The number of sales and median price of residential properties has been declining in Hawaii County since 2005 or 2006. As of April 2009, the median single-family home sold for \$240,000 while the median condominium property sold for \$269,000.⁸ However, due to the small number of transactions, recent median prices can also be erratic. For instance, in February 2009, condominiums recorded a median price of \$435,000 (13 sales), a price that is higher than the Big Island medians for all preceding years.⁹

⁸ University of Hawai'i Economic Research Organization, Economic Information Service, as accessed March 17, 2009; Hawaii Information Service, in *Honolulu Advertiser*, March 6, 2009 and in *Pacific Business News*, May 8, 2009.

⁹ Hawaii Information Service, data as of March 16, 2009.

Homes near to `O`oma are selling at substantially higher prices than for the County as a whole, but prices and number of sales have also trended down. In January and February, the median price for a single-family home in Kona Palisades was \$419,000 (5 sales), while for condominiums it was \$445,225 (2 sales). Compared to their 2007 medians, these represent a 22% decline for single-family homes but a 52% increase for the condominiums.

Also nearby, the Kealakehe area, a predominately single-family neighborhood, recorded no sales in January and February 2009, but the 2008 median single-family price of \$326,250 (13 sales) was down 26% from 2007 (13 sales.)

Residential Market Assessment Update

Projected Supply

Review of entitled and planned residential projects within the CRMA uncovered 8,300 units of maximum potential development between 2009 and 2030, compared to 8,000 identified (for 2007 to 2030) in the previous study.¹⁰ The additional capacity is distributed within the CRMA but there is more within North-Kona North than in South Kohala-Waikoloa.

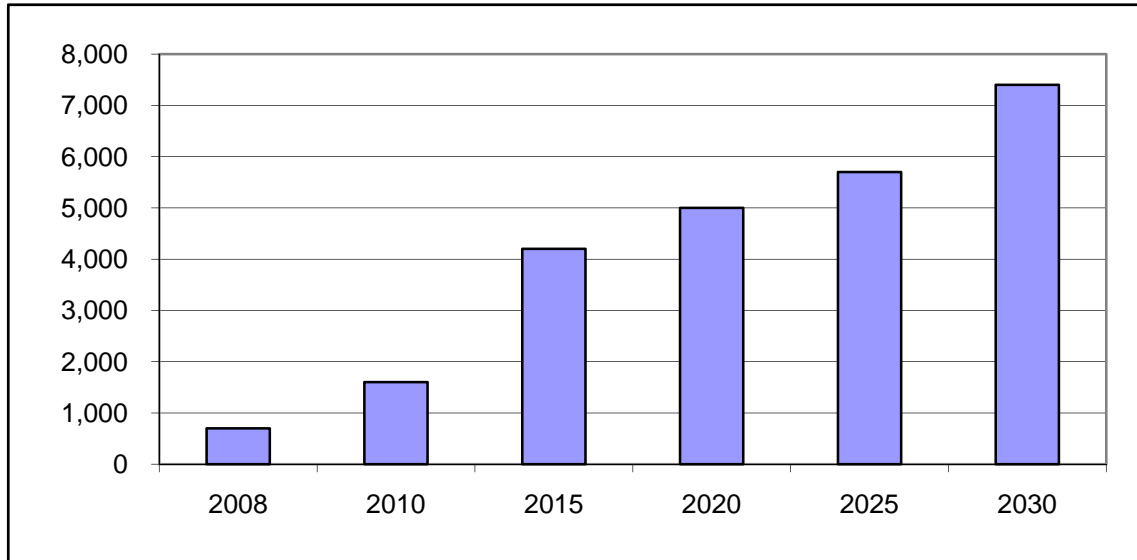
Supply vs. Demand

The slightly higher anticipated household formation within the CRMA, countered by the slightly higher level of potential future development results in a projected housing unit deficit in the CRMA of similar magnitude to that concluded in the prior study. The revised analysis still shows a significant and increasing shortage of primary housing opportunities within the CRMA, with potential demand exceeding entitled supply by more than 7,000 units by 2030.

¹⁰ Figures are based on the lesser of stated developer plans or maximum entitlements, on lands with State Land Use Commission Urban designation or exemption (such as for DHHL), as of March 2009. Inventories exclude portions of projects intended or likely to be sold for other than primary residential purposes.

Mikiko has been informed that the LUC revoked the Urban classification of one of the significant projects that is counted in the reported entitled inventory, the Aina Le`a development in South Kohala near to Mauna Lani Resort. However, it is unclear at this time what the impact or status of this LUC decision is, and the therefore assessments herein have not been adjusted to reflect this potential diminution in supply. If the Aina Le`a site were to lose its Urban classification, the loss of potential residential development there would tend to increase the need for other residential developments in the CRMA.

**Resident Housing Unit Deficit in the CRMA
Assuming Full Build-out of Currently LUC-Entitled or Exempt Lands**



Source: Mikiko Corporation, 2009. See March 2007 market report, Exhibit 3-6 for more complete presentation of methodology.

As noted in the prior market report, this conclusion is reached even after assuming substantially accelerated housing development in the coming years. Thus, without further Urbanization of lands for residential use, Island residents desiring to live near to the many growing centers of employment in the CRMA could continue to be shut out by a shortage of appropriate housing supply.

**Supply and Demand for New Resident Housing Units
within the CRMA, 2008 to 2030**

Future Demand	Pent-up demand, end 2008	700
	Future need, 2008-2030	<u>14,500</u>
	Total need	15,200
Future Supply*	Planned and entitled (8,300 less 5% vacancy)	7,900
Shortage	As of 2030	7,300

Source: Mikiko Corporation, 2009.

* Based on the lesser of the maximum planned or entitled number of units, and build-out on all lands currently designated Urban by the State Land Use Commission, and proposed for primary residential development, by 2040.

`O`oma's 950 to 1,200 proposed housing units could offer a solution for a substantial portion of the CRMA's currently unentitled housing needs through 2030. Assuming some 80% to 85% of `O`oma's units are used as primary homes, as concluded previously, the proposed development could be expected to address some 10% to 14% of the identified shortage.

Residential Price Trends

The comparison residential projects of the 2007 study were re-surveyed to update information on sales prices and/or marketing plans. In addition, Kulalani, a five unit-per acre, off-ocean townhouse development in Mauna Lani Resort, was added as a comparison project with relevance to the 35 to 60 units proposed at `O`oma's Makai Village.

In the new survey period (January 2008 to March 2009), sold and planned prices were down 0% to 30% from the previous period (November 2006 to October 2007.)¹¹

Residential Price Conclusions

Based on the market updates, market unit prices were reviewed for each of the `O`oma product categories and the overall average market unit prices is now estimated at \$450,000, or 13% less than estimated in 2007. This rounded conclusion reflects about \$450,000 at the built single- and multifamily products and about \$500,000 at the proposed estate lots. It excludes the cost of custom home development on the latter.

Additionally, the County of Hawaii has updated its affordable housing price guidelines since the 2007 study. Effective July 17, 2008, qualifying home sales prices for a family of four earning the stated percent of the prevailing County median family would have been:¹²

- ☒ At 110% - \$271,000
- ☒ At 120% - \$295,600
- ☒ At 130% - \$320,300

Sales Absorption and Other Residential Market Conclusions

The first unit sales at the development are now projected for 2014, rather than 2012 as stated previously. With both the current Urban and the Petition areas of the site now planned for development in the first phase, sales absorption is projected at an average of about 70 units

¹¹ This includes 7 of the 8 previously surveyed projects. Mikiko was unable to contact a representative at the proposed Palamanui development for this update.

¹² County of Hawaii, "Affordable Housing Guidelines for the County of Hawaii." For-sale guidelines assume a 30-year conventional fixed mortgage, fixed interest rate of 6.5%, housing expenses equal to 28% of gross annual income, and a down payment equal to 5% of the sales price.

per year including both primary and secondary home users, and affordable as well as market units. This is marginally faster than the 67 average projected previously. This sales pace would result in sell-out of the development by about 2030 (shown as 2029 in prior report.)

Other study conclusions regarding product characteristics and target markets have not changed since the 2007 report.

Summary of 2009 Residential Market Conclusions for `O`oma
Maximum development scenario

	Number of units (unchanged)	Sales absorption, 2014 to 2020	Sales absorption, 2021 to 2030	Average sales price (2009 dollars)
Finished homes (single & multifamily), market	875	415	460	\$450,000
Estate lots, market	85	70	15	\$500,000
Affordable homes (multifamily)*	240	120	120	\$295,600
Total/weighted average	1,200	605	595	\$423,000

* Assumes 20% of total units and a 1:1 credit per County guidelines currently in effect. Actual credits could vary depending on affordable housing market segments and other factors to be agreed upon with the County, and such variation could change the affordable unit count. Estimated average price considers County guidelines in effect as of July 17, 2008 regarding pricing of for-sale units for a family of four earning 120% (midpoint of 110% to 130%) of County median family income.

Commercial Market Assessment Update

`O`oma is proposed for up to 200,000 square feet of retail- and office-based developments. The Primary Trade Area (PTA) for such commercial uses is anticipated to be the entire North Kona and South Kohala districts of the Island. This is a larger reference area than the CRMA considered in the residential market assessment, as explained in the prior market study.

Since completing the prior market study, nearly 400,000 square feet of retail spaces have come on-line in the PTA, and some 300,000 more square feet of planned or maximum entitled future commercial supply were identified. Thus, as of April 2009, commercial office and retail

inventory in the PTA was estimated at 2.96 million square feet, with an additional 2.90 million square feet entitled and planned.¹³

Like conditions statewide, the area's commercial market environment has begun to soften, with PTA vacancies estimated at 8% for retail areas and 7% for office spaces, as of March 2009.¹⁴ This compares to 7% retail in an area defined as "West Hawaii" and 6% in the PTA for office spaces, as noted in the 2007 study.

Notable adjustments to the assessment of estimated supportable commercial space in the PTA were made to reflect the following more recent estimates and assessments:

- ✘ **DBEDT's higher projected population** levels for the County, which were reflected as slightly higher population levels within the CRMA and hence also the PTA – the PTA is currently estimated to house some 112,000 residents in 2030 vs. the 105,000 projected previously;
- ✘ **A lower area visitor population** in 2008 as compared to 2006, and a slower rate of increase in visitor days, as provided by DBEDT, are reflected in a more conservative outlook for future visitor population levels in the PTA – 25,200 persons per day in 2030 vs. 32,300 as projected previously; and
- ✘ **More conservative outlooks** on supportable gross leasable retail area per daytime population, the percent of resident population participating in the civilian labor force, and supportable rentable office areas per civilian employee.

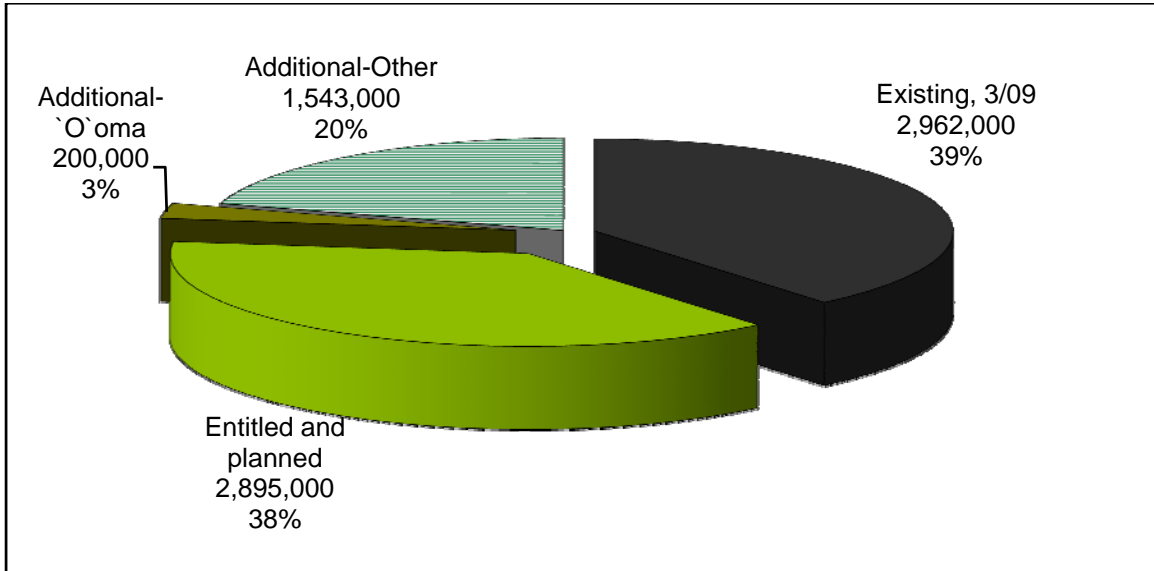
Taken together, the updated assessment is that 7.6 million square feet of commercial space is considered supportable in the PTA by 2030. `O`oma's maximum of 200,000 square feet might represent some 3% of this potential future marketplace. It could also represent a venue for some 11% of the currently unplanned but future supportable commercial space in the PTA. These market shares are not materially different from those projected previously and are still considered achievable.

¹³ As for the residential surveys, Mikiko considered potential development on properties with major State land use entitlements in place as of March 2009, together with existing development plans on these lands.

See also footnote 10, above, regarding the potential loss of entitled supply at the Aina Le`a site in South Kohala. This project had been proposed for up to 200,000 square feet of commercial area. As for the residential market update, this change has not been reflected in `O`oma's commercial market assessment update at this time. However, if the Aina Le`a site does lose its Urban status, the need for other commercial development in the PTA could be expected to be accelerated.

¹⁴ Colliers Hawaii Consulting, A Division of Colliers Monroe Friedlander, Inc., March 31, 2009.

**Projected Supportable PTA Commercial Space Inventory in 2030
Square feet of Gross Leasable Area**



Source: Mikiko Corporation, 2009. See 2007 study for more complete presentation of methodology.

As in the prior market study, it is projected that approximately half the maximum proposed inventory could be supportable by 2020, with buildout of the total 200,000 square feet realized by 2030. Other market conclusions regarding commercial establishment types and potential consumer markets also remain unchanged.

**Summary of 2009 Commercial Market Conclusions for O'oma
Maximum development scenario**

	2014-2020	2021-2030	Total
Retail and office space, in square feet	100,000	100,000	200,000

Source: Mikiko Corporation, 2009.

Economic and Fiscal Impact Update

Adjusted Variables

The economic and fiscal impact analysis was recalibrated to reflect the lower assessment for market home sales prices, higher County affordable home sales guidelines, and the slightly later start date for the Project. Although other input factors were not changed from those presented in Mikiko's 2008 economic and fiscal impact study,¹⁵ the pricing and absorption changes result in slightly lower overall development cost estimates, and impact other study conclusions as presented below.

Economic and Fiscal Study Impacts

The updated market conclusions result in changes of +/- 5% or less for the economic and fiscal impacts assessed, except for the County government fiscal impacts, which can be summarized for year 2030 as follows:

- ☒ Net additional government operating revenues now estimated at \$2.7 million per year rather than the \$3.2 million per year projected previously (-16%.)
- ☒ Revenue/expenditure ratio of 5.2 rather than the 6.0 projected previously (-14%.)

Both of the above changes are attributed to the lower sales prices and hence lower real property taxes that could be expected to accrue to the County government.

Report Conditions

This assessment is based on information provided by government agencies, developers, brokers, landowners, and other third party sources. While every attempt has been made to verify information via multiple sources, it is not always possible to do so. Mikiko cannot guarantee the accuracy of all information upon which its assessments are based.

This report is for the planning purposes of `O`oma Beachside Village, LLC, PBR HAWAII & Associates, Inc., Carlsmith Ball LLC and their consultants, as well as for public disclosure of the nature of the Project pursuant to seeking State and County land entitlements. It is not to be used for solicitation of investment or other third party purposes without prior written consent of the author.

¹⁵ Mikiko Corporation, "Economic and Fiscal Impact Assessment for `O`oma Beachside Village," April 2008. This document may also be referred to herein as "the 2008 econ/fiscal study."

Petitioner's Exhibit 14

Review of O'oma Beachside Village Market Absorption Findings With a Phased Site Development (October 2009)

Review of `O`oma Beachside Village Market Absorption Findings With a Phased Site Development

October 2009

Prepared by Mikiko Corporation
for `O`oma Beachside Village, LLC

This report summarizes our recent market review on `O`oma Beachside Village (`O`oma, or “the Project”), considering its potential absorption under a new phased development plan.

Study Background and Objective

Mikiko Corporation prepared market and economic/fiscal impact assessments for `O`oma in reports dated December 2007 and April 2008, respectively. In May 2009, Mikiko also prepared an update report that reviewed prior conclusions in light of updated market and demographic information.

Following a recent Hawaii State Land Use Commission (LUC) opinion regarding incremental development at an Oahu project, you engaged Mikiko to review its market absorption findings, considering a new plan for phased development of `O`oma. We were asked to devote particular attention to the potential absorption over the initial 10-years after an assumed date of LUC approval.

Previous Findings

Located in the North Kona District of the Island of Hawaii, `O`oma is proposed to be developed with 950 to 1,200 residential units and up to 200,000 square feet of commercial retail and office uses. The residential component would include affordable as well as market-priced homes, delivered in a variety of product types including mixed-use apartments, townhouses, condominiumized and traditional single-family homes, and vacant lots for custom home development.

Mikiko’s 2007 market study provides more detail on the overall development concept, and market and other conclusions were also updated in May 2009. The May study concluded that residential units could be expected to be sold at an average annual rate of 70 per year, with full absorption by 2030¹.

It also projected that about 100,000 square feet could be expected to find market support by 2020, with the remaining 100,000 square feet supported between 2021 and 2030.

¹ The May 2009 study update also estimated the average market unit sales prices at \$450,000, and noted then prevailing Hawaii County guidelines showing qualifying prices for affordable units would range from \$271,000 to \$320,300, for a family of four earning between 110% and 130% of the County median family income.

Key Assumptions and Parameters of Current Review

Mikiko does not typically attempt to project the market cycle timing for a substantial community development. However, given the relatively small size of the first proposed phase of `O`oma and its potential to be developed relatively soon, it is feasible to consider its market performance given near-term conditions that may be reasonably anticipated.

While market cycle outlooks are also presented herein for `O`oma's second phase, they should be considered with less weight than those presented for Phase 1.

This market review assumes the following:

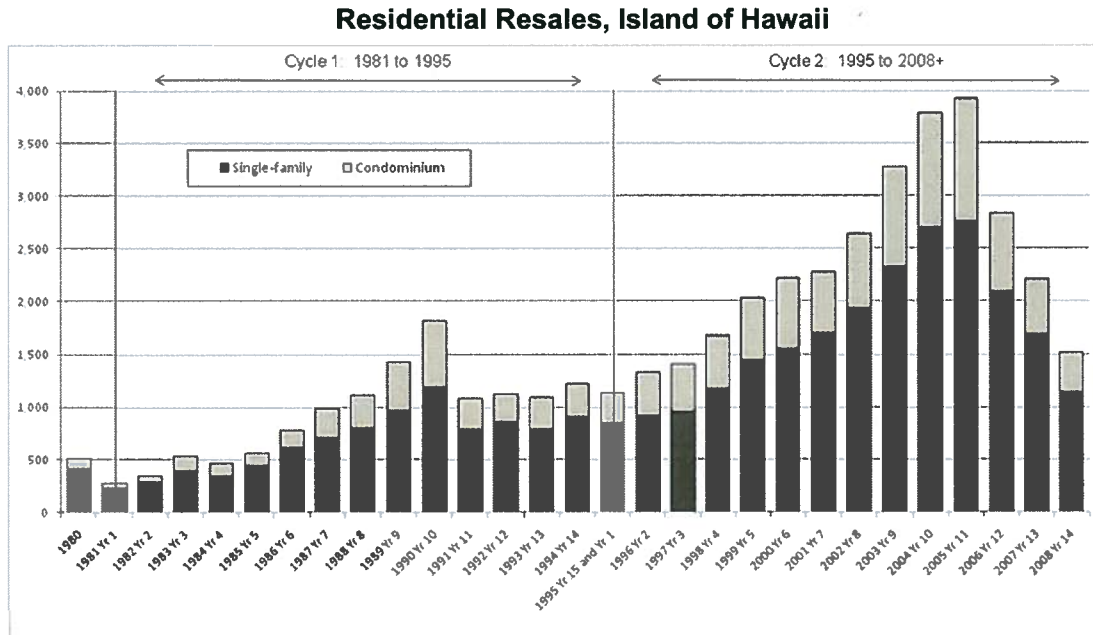
1. State LUC entitlements achieved by the beginning of 2011.
2. Hawaii County Zoning and Special Management Area (SMA) entitlements achieved by early 2012.
3. A phased development approach, consisting of:
 - a. Phase 1 (Parcel 4), also denoted as the Residential Village and the Makai Mixed Use Village, with:
 - i. 555 to 680 residential units (of which 75 to 80 would be vacant lots and a substantial share would be affordable homes), and
 - ii. Up to 50,000 square feet of commercial area.
 - b. Phase 2 (Parcel 22), also denoted as the Mauka Mixed Use Village, with the balance of the proposed development:
 - i. 395 to 520 residential units, and
 - ii. Up to 150,000 square feet of commercial area.
4. The first residential products, the vacant lots, are available for sales closings by the second half of 2013. The first built residential products, including single-family and multifamily units, are available for occupancy by the beginning of 2014.
5. `O`oma's residential units are all developed for-sale. If some are developed as rental projects, their lease absorption could be more rapid than the figures presented herein.
6. The Project will be professionally and effectively marketed, and the current down real estate market conditions will begin to resolve in 2011. (See discussion below).

This report does not reconsider the economic or fiscal impacts of the Project in any interim period. Given that no changes are anticipated to the total development costs, product types or product pricing, 'O'oma's economic and fiscal impacts at buildout are not anticipated to change from those presented in Mikiko's April 2008 report.

The end of this text presents important conditions of this study and report.

Historical Real Estate Cycles, Hawaii Island (ref. Exhibit 1)

The chart below depicts a nearly 30-year trend in the number of single-family and condominium resales on the Island of Hawaii. It captures two real estate sales cycles: Cycle 1 runs approximately 15 years, from 1981 to 1995, while Cycle 2 begins in 1995, and is still in progress after the 14 years shown on the chart. Despite the ups and downs of the marketplace, there has been a significant upward shift in the number of sales between the two cycles. The average number of units sold in the first cycle was 932, compared to 2,303 in Cycle 2 as of the end of 2008. This structural shift reflects the significant population increases on the island over the past three decades, as well as other factors discussed below.

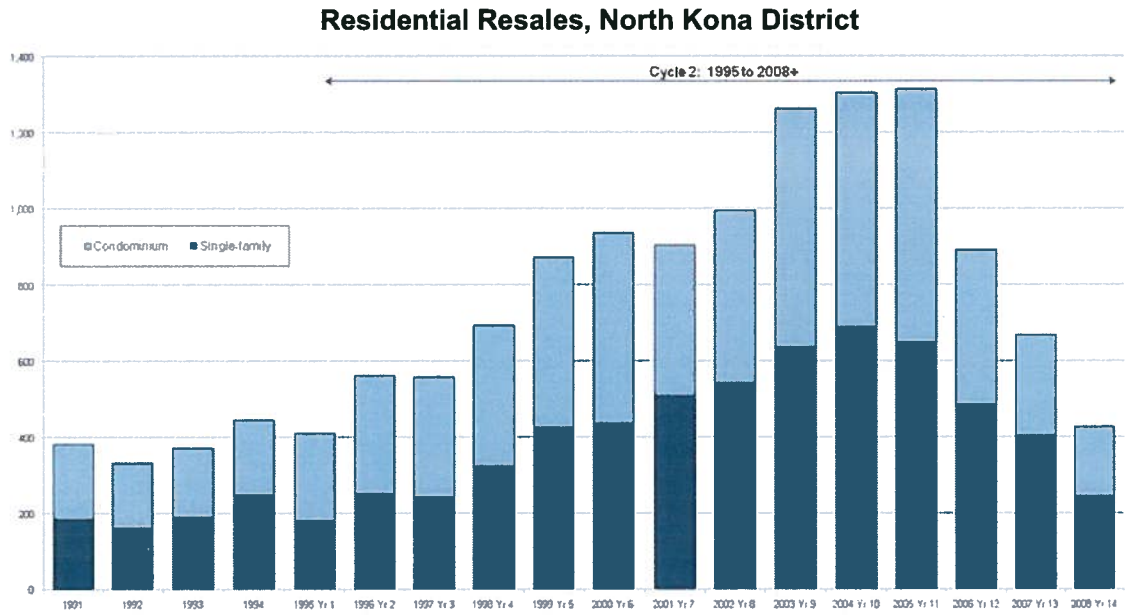


Source: Mikiko Corporation, based on data provided by University of Hawaii Economic Research Organization (UHERO), accessed on October 15, 2009.

The above data understate the total Island residential marketplace, as they do not include developer sales, sales of vacant residential-zoned lots or any agriculture-zoned properties used as residences.

Historical Real Estate Cycle, North Kona District (ref. Exhibit 2)

The next chart depicts sales trends in North Kona, the district in which 'O'oma is located. While this regional data is only available since 1991, they capture all 14 years to date of the current real estate cycle. As of 2008, average annual sales in this Cycle 2 number 843, with about half typically being single-family and half condominium units. District sales peaked in 2005, or Year 11 of the current cycle, at 1,314 sales, and were notably elevated in the two prior years also. However, the 428 sales reported in 2008 are approaching the 410 that were reported in 1995, at the beginning of this cycle.



Source: Mikiko Corporation, based on data provided by Hawaii Information Service, October 2009.

As for the Island-wide data, the North Kona data exclude developer sales, vacant lots and agriculture-zoned properties used as residences.

Real Estate Market Outlook

As of September 2009, year-to-date Island-wide sales are down by 8% from the 428 shown for 2008. However, the monthly pattern in 2009 has been generally improving as the year progresses, and the 9-month decline from 2008 has narrowed from over 20% since the first six months of the year. As elsewhere in the U.S., 2009 sales have been supported by favorable interest rates as well as the Federal credit for first-time buyers.

About a year ago, some researchers were forecasting a turnaround in residential real estate conditions during 2009.² However, it is since becoming evident that a number of broad economic factors are likely to continue to depress residential real estate buying into 2011.³ These factors include:

- Continuing high unemployment and falling real personal income.
- Possible end to the tax credits and favorable interest rates that buoyed 2009 sales.
- Potential for a “W” recovery, with 2009’s gains being retrenched again in 2010.
- Ongoing weakness in the capital and financing markets, with implications for supply, demand, and perhaps most importantly, buyer confidence, such as:
 - Need for workouts in the conforming residential loan market in addition to the nonconforming loan sector;
 - Large potential supply of short sales that have not been resolved from among residential loans that are already in default and/or “underwater”; and
 - Coming wave of likely defaults in the commercial mortgage market, which could force banks and other lenders to act more aggressively on their residential REO in order to focus on their commercial problems, and could dampen lending to residential developers.

Considering all the above, this assessment assumes that residential sales for both Hawaii Island and the North Kona District close out 2009 at about 5 to 8% below their respective 2008 levels, and remain stagnant in 2010. Stabilization and the beginnings of an upturn are anticipated in about mid-2011, and that year is thus assumed to mark the beginning of a third sales cycle.

Hawaii Residential Real Estate Cycle Patterns (ref. Exhibit 3)

Using the available data, Mikiko analyzed the pattern of relative sales performance in the various years of the last two real estate cycles. We also ran two scenarios extending the current real estate

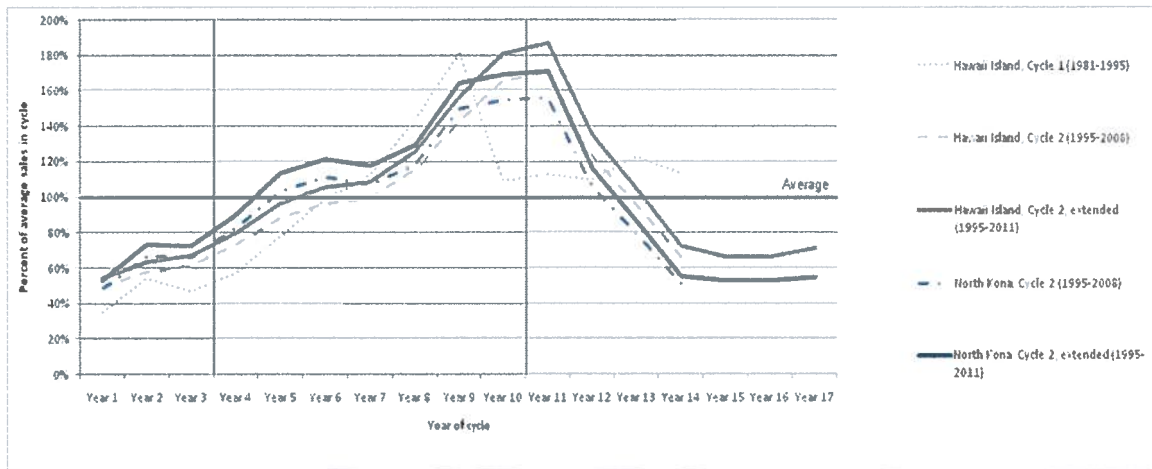
² For example, see Laney, Leroy (economic advisor to First Hawaiian Bank), “A few bright spots emerge from Bleak Neighbor Island outlooks,” *Pacific Business News*, October 31, 2008; Yun, Lawrence, (National Association of Realtors Chief Economist), “Housing Market Outlook Through Recession,” December 2008.

³ For example, see John Burns Real Estate Consulting, “Short Sales Are About to Increase,” October 1, 2009; Ibid, “The Housing Market is about to Become Even More Oversupplied,” October 7, 2009; Ibid, “Commercial RE Distress Will Have A Big Impact on Housing,” October 16, 2009; University of Hawai’i Economic Research Organization, “Hawai’i Quarterly Forecast Update: Recovery Still Around the Corner,” September 25, 2009; Ibid, “No Bottom Yet to Construction Downturn,” September 11, 2009; Ibid, “Neighbor Islands Bear Brunt of Recession,” May 15, 2009; Wei, Lingling and Tamman, Maurice, “Fed Frets About Commercial Real Estate,” in *The Wall Street Journal*, October 7, 2009.

cycle to 2011, with sales following a stabilizing but relatively stagnant pattern in 2009, 2010, and 2011, as described above.

Sales patterns within each of the cycles are examined as shown in the chart below. The prevailing trend is for gradual increases in Years 1 to 3 of each cycle, then picking up momentum in Years 4 through 8. All of the cycles evaluated hit their peaks within Years 9, 10 and/or 11 of the respective cycle. The decline thereafter is typically rapid, and is followed by a leveling-off period before the next cycle commences.

Comparison of Recent Big Island Residential Market Cycles



Source: Mikiko Corporation, October 2009.

The most current cycle had three very strong years of sales, as compared to just one in the 1981 to 1995 cycle. This more robust performance in Cycle 2 is attributed to the greater depth of the Island's markets in the 21st century as compared to the 1980s and 1990s, with more diverse product types and demographics supporting a greater variety of market segments than could be tapped in previous years. Most notable is a very strong and affluent off-shore second home and investor buyer market, but other growing segments include first-time buyers, move-up buyers, empty nesters, and investors. Along with the significant population growth of the past decades, these structural changes in the marketplace are expected to carry on into future years.

The sales data are examined further with respect to the patterns common to Years 4 through 10 of a given cycle. These years would correspond to 2014 to 2020, assuming a third real estate cycle begins in 2011. This period reflects the assumptions stated for the first full year of sales at 'O'oma (2014) and the 10-year mark after LUC approval of the Property (2020.) Overall, annual sales in the study sample Years 4 to 10 are 111% to 129% higher than the average number of sales for each cycle as a whole.

`O`oma Residential Product Absorption by Phase (ref. Exhibit 4)

The real estate market in which `O`oma could initially be introduced is expected to function more like the more recent cycle (1995 to 2008+) than Cycle 1, because of the structural changes noted previously. Also, more weight is given to the hypothetically extended Cycle 2s (1995 to 2011) than the strictly historical data. These extended cycles reflect what is already known about 2009 sales, as well as an emerging consensus among unbiased forecasters regarding 2010 and 2011. Because of its geographic relevance, the strictly historical cycle data for North Kona is also noted.

These most relevant cycles are summarized below in terms of their variation from the mean for Years 4 to 10 (representing 2014 to 2020) and a subsequent period beginning in Year 11 and extending to the projected sell-out of `O`oma in 2030.

Analysis of Most Relevant Big Island Residential Market Cycles

	Average sales in cycle	Variation from average in Years 4 to 10	Variation from average in Years 11+
Hawaii Island, Cycle 2, extended (1995-2011)	2,150	122%	89% (Years 11-17 and 1-3)
North Kona, Cycle 2, historical (1995-2008)	843	118%	87% (Years 11-14 and 1-6)
North Kona, Cycle 2, extended (1995-2011)	770	129%	79% (Years 11-17 and 1-3)

Source: Mikiko Corporation, October 2009

These historical and hypothetically extended observations inform the outlook for the first residential phase at `O`oma. Potential performance within the second phase is also depicted to show how the entire Project's absorption conforms to earlier assessments. However, the opinions expressed regarding the market cycle position of Phase 2 are necessarily more tentative than those for Phase 1. The mid-range outlook is summarized below; Exhibit 4 also shows low- and high-range outlooks.

Potential Residential Market Absorption at `O`oma, by Phase (Mid-Range Outlook)

	Total Project	2H 2013 to 2020 (Years 4-10*)	2021 to 2030 (Years 11+)	Comments
Years in period	17.5	7.5	10	Initial sales in late 2013 would be all vacant lots.
Sales as percent of average for Project	100%	125%	85%	Reference preceding table.
Average annual sales	70	88	60	70 average annual Project sales as projected by Mikiko in May 2009.
Potential total sales in period	1,260	660	600	Total potential of more than 1,200 reflects potential ability to sell-out Project before 2030.
Projected sales:				
Phase 1	680	660	20	Figures reflect maximum Project configuration of 1,200 units.
Phase 2	<u>520</u>	<u>0</u>	<u>520</u>	
Total	<u>1,200</u>	<u>660</u>	<u>540</u>	
Percent absorption:				
Phase 1	100%	97%	3%	Figures assume sequential development of phases.
Phase 2	<u>100%</u>	<u>0%</u>	<u>100%</u>	
Total	<u>100%</u>	<u>55%</u>	<u>45%</u>	

* Year 4-10 average pace also applied to early release of lots in second half of 2013, which could correspond to the end of Year 3 of a hypothetical Cycle 3.

Source: Mikiko Corporation, October 2009. See Exhibit 4 for further information.

`O`oma Commercial Product Absorption by Phase

The outlook for commercial absorption remains unchanged from that set forth in December 2007 and May 2009, since the commercial spaces are designed to fit the physical and planning characteristics of the two phases proposed. Thus, despite the potential for accelerated residential sales at `O`oma in its early years of marketing, the anticipated pace of market support for commercial space remains as follows:

Potential Commercial Market Support at `O`oma, by Phase

	Total Project	2014 to 2020	2021 to 2030	Comments
Years in period	17	7	10	
Projected development :				Figures reflect maximum Project configuration of 200,000 commercial square feet.
Phase 1	50,000	50,000	0	
Phase 2	<u>150,000</u>	<u>50,000</u>	<u>100,000</u>	
Total	<u>200,000</u>	<u>100,000</u>	<u>100,000</u>	
Percent absorption:				Figures reflect maximum Project configuration of 200,000 commercial square feet.
Phase 1	100%	100%	0%	
Phase 2	<u>100%</u>	<u>33%</u>	<u>67%</u>	
Total	<u>100%</u>	<u>50%</u>	<u>50%</u>	

Source: Mikiko Corporation, December 2007 and May 2009.

Conclusions for Absorption of `O`oma, Phase 1

By 2020 or within 10 years of an assumed LUC entitlement, `O`oma could reasonably be anticipated to have sold 90% to 100% of its Phase 1 (Parcel 4) residential inventory. `O`oma is also expected to find market support for up to 100,000 square feet of commercial area by 2020, or more than twice the area proposed for development in Phase 1.

This accelerated residential market absorption in the first part of the Project's marketing has been explained in terms of the anticipated patterns of real estate cycles. It also appears to be supported by the diverse range of product proposed to be offered in Phase 1, ranging from a substantial share of affordable housing, to estate lots with ocean access.

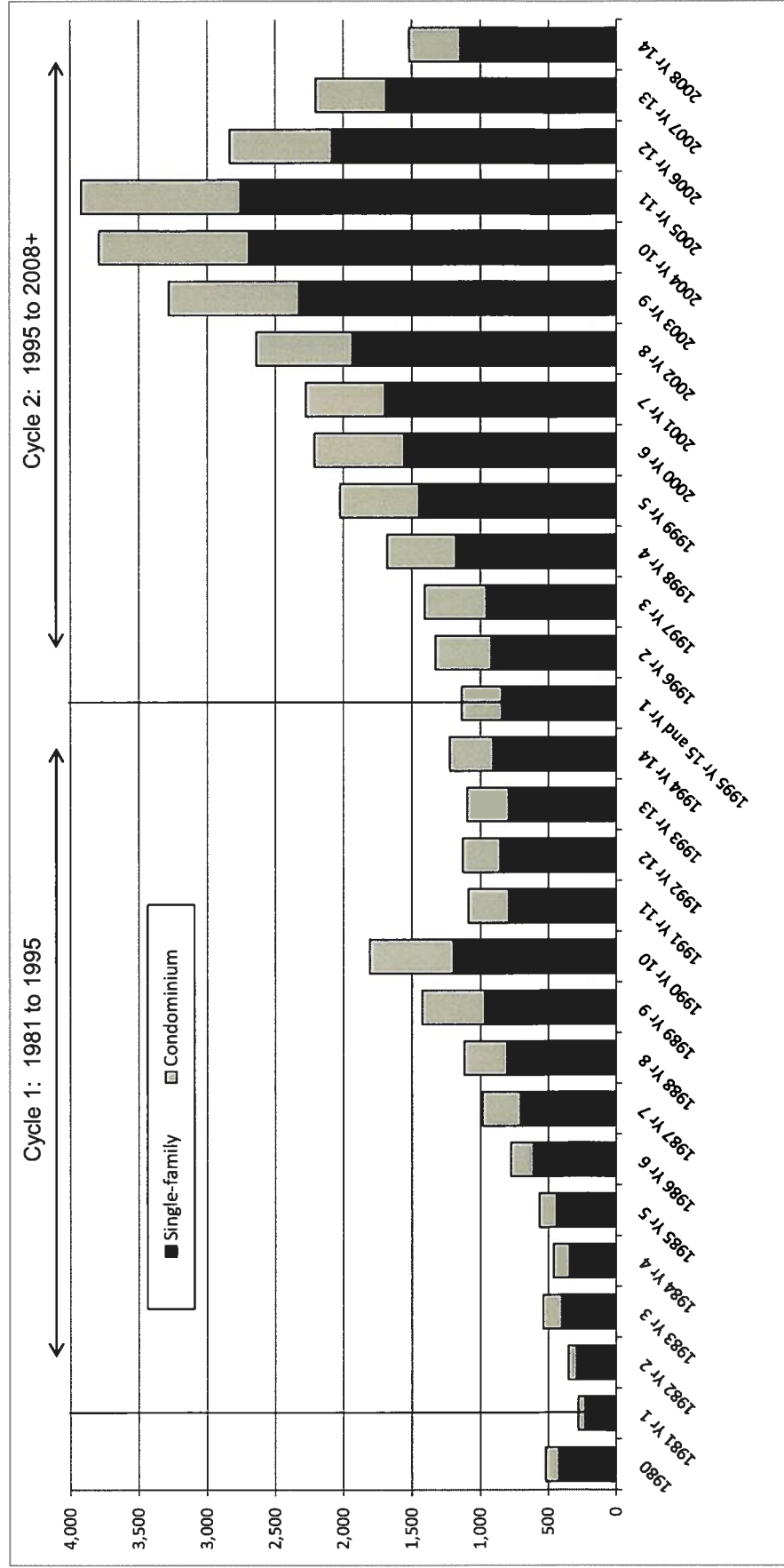
Study Conditions

This assessment is based in part on information provided by your planning and other consultants, private data vendors, news bureaus, and other third party sources as cited. While the sources selected are generally believed to be reliable and attempts have been made to verify information via multiple sources, it is not always possible to do so. Mikiko cannot guarantee the accuracy of all information upon which its assessments are based.

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Exhibit 1

**Number of Residential Resales, Island of Hawaii
1980 to 2008**

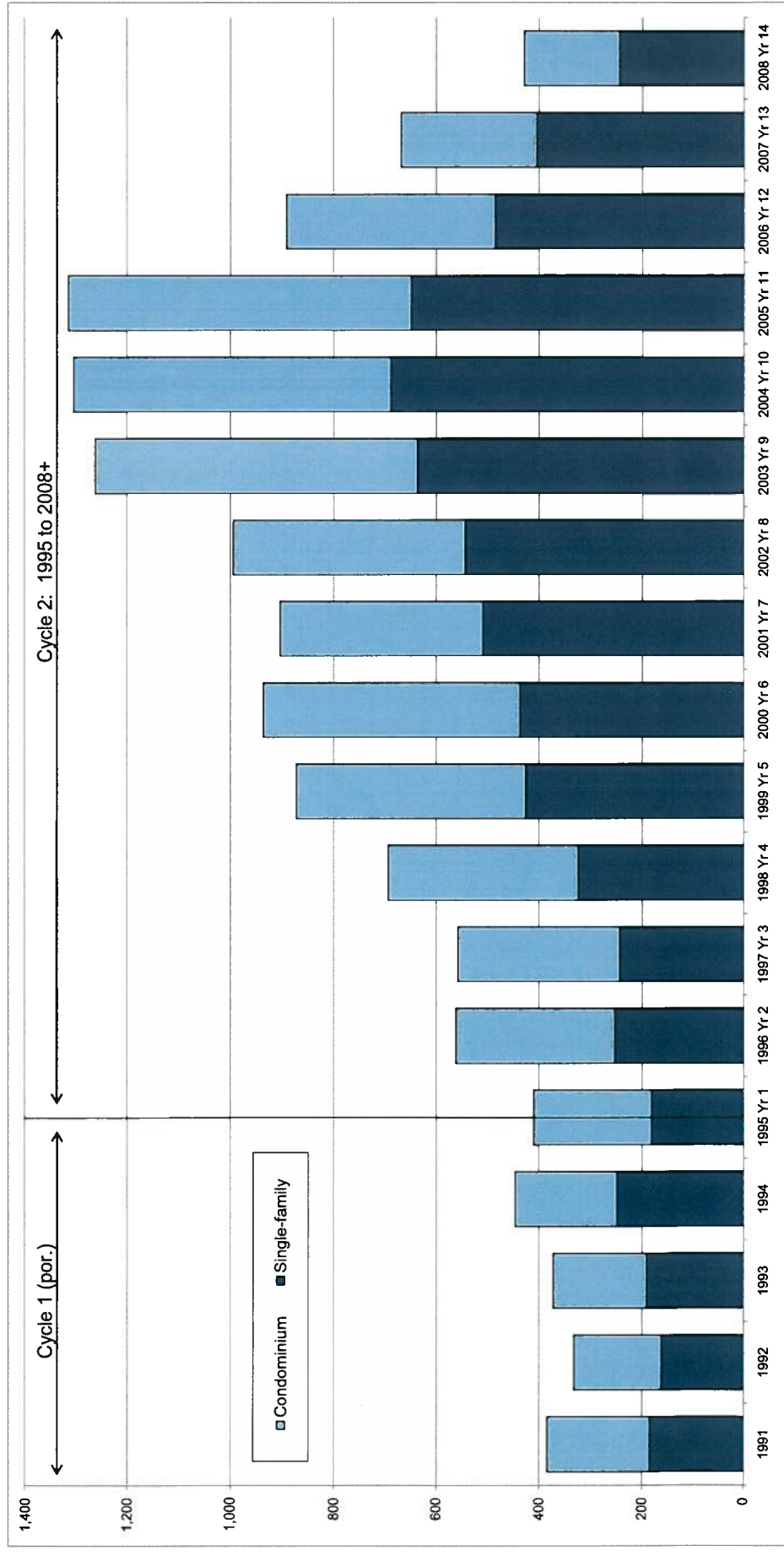


Note: Excludes first sales of developer units and residential-zoned vacant lot sales.
Source: Mikiko Corporation, based on data provided by University of Hawaii Economic Research Organization (UHERO), accessed online on October 15, 2009.

Exhibit 2

**Number of Residential Resales, North Kona District
1991 to 2008**

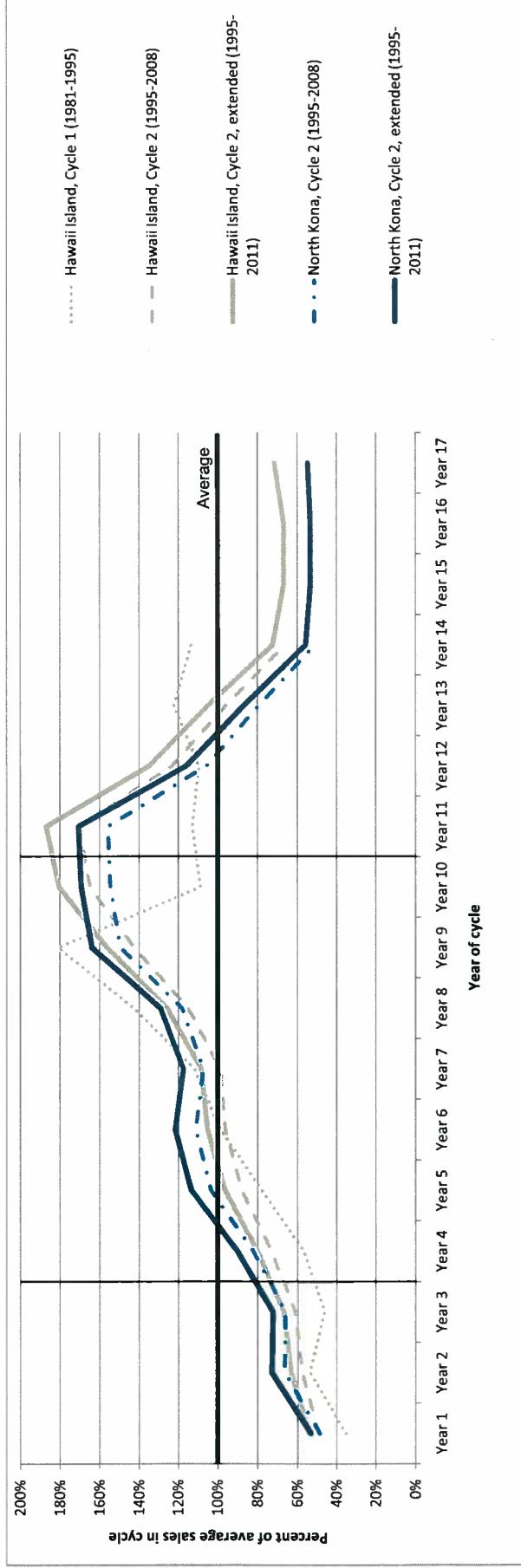
	Cycle 1 (por.)										Cycle 2							Cycle 2 statistics			
	1991	1992	1993	1994	1995	1996	1997	1998	1999	2000	2001	2002	2003	2004	2005	2006	2007	2008	Average	Low	High
Single-family	185	162	191	249	181	253	244	324	425	437	509	543	637	689	649	485	404	245	430	181	689
Condominium	199	170	181	197	229	308	313	370	448	500	396	452	625	615	665	407	264	183	413	183	665
Total	384	332	372	446	410	561	557	694	873	937	905	995	1,262	1,304	1,314	892	668	428	843	410	1,314



Note: Data as provided to Hawaii Information Service by participating brokers on the island of Hawaii (all licensed brokers on the island are required to join HIS, per HIS); excludes residential-zoned vacant lot sales and first sales of developer units.
Source: Mikiko Corporation, based on data provided by Hawaii Information Service, October 2009

Comparison of Historical and Hypothetically Extended Residential Resale Cycles Island of Hawaii and North Kona District

	Historical																	Projected		
	Year 1	Year 2	Year 3	Year 4	Year 5	Year 6	Year 7	Year 8	Year 9	Year 10	Year 11	Year 12	Year 13	Year 14	Year 15	Year 16	Year 17	Year 15	Year 16	Year 17
Hawaii Island, Cycle 1 (1981-1995)	35%	54%	46%	57%	78%	99%	112%	143%	181%	109%	113%	110%	122%	113%						
Hawaii Island, Cycle 2 (1995-2008)	49%	58%	61%	73%	88%	96%	99%	115%	143%	165%	171%	123%	96%	66%						
Hawaii Island, Cycle 2, extended (1995-2011)	54%	63%	67%	80%	96%	105%	108%	126%	156%	181%	187%	135%	105%	72%				67%	67%	71%
North Kona, Cycle 2 (1995-2008)	49%	67%	66%	82%	104%	111%	107%	118%	150%	155%	156%	106%	79%	51%						
North Kona, Cycle 2, extended (1995-2011)	53%	73%	72%	90%	113%	122%	118%	129%	164%	169%	171%	116%	87%	56%				53%	53%	55%



Cycles 3 & 4, hypothetical (2011-2030+):	2011	2012	2013	2014	2015	2016	2017	2018	2019	2020	2021	2022	2023	2024	2025	2026	2027	2028	2029	2030
	Year 1	Year 2	Year 3	Year 4	Year 5	Year 6	Year 7	Year 8	Year 9	Year 10	Year 11	Year 12	Year 13	Year 14	Year 15	Year 16	Year 17	Year 1	Year 2	Year 3
Average variation by period in cycle:																				
Hawaii Island, Cycle 1 (1981-1995)																				
Hawaii Island, Cycle 2 (1995-2008)																				
Hawaii Island, Cycle 2, extended (1995-2011)																				
North Kona, Cycle 2 (1995-2008)																				
North Kona, Cycle 2, extended (1995-2011)																				
	Average sales in whole cycle										Yrs 11+ (2021-2030)									
	932										83% Years 11-14, 1-6									
	2,303										88% Years 11-14, 1-6									
	2,150										89% Years 11-17, 1-3									
	843										87% Years 11-14, 1-6									
	770										79% Years 11-17, 1-3									
	Yrs 4-10 (2014-2020)										Yrs 11+ (2021-2030)									
	111%										83% Years 11-14, 1-6									
	111%										88% Years 11-14, 1-6									
	122%										89% Years 11-17, 1-3									
	118%										87% Years 11-14, 1-6									
	129%										79% Years 11-17, 1-3									

Exhibit 4

Low, Medium and High Scenarios for O`oma Residential Sales, by Phase
 Second Half 2013 to 2030

	Total project	2H 2013-2020 (Cycle Years 4-10)			2020-2030 (Cycle Years 11+)		
Years in period	17.5	7.5			10		
Percent of average projected		<u>Low</u>	<u>Med</u>	<u>High</u>	<u>Low</u>	<u>Med</u>	<u>High</u>
Average annual sales	70	115%	125%	130%	80%	85%	90%
Potential total sales in period	1,260	81	88	91	56	60	63
Projections by phase:		610	660	680	560	600	630
Phase 1	680	610	660	680	70	20	0
Phase 2	520	0	0	0	520	520	520
Percent absorption by phase:							
Phase 1	680	90%	97%	100%	10%	3%	0%
Phase 2	520	0%	0%	0%	100%	100%	100%
Total	1,200	51%	55%	57%	49%	45%	43%

¹ Based on Medium scenarios for the two periods shown.

Petitioner's Exhibit 15

SHPD Letter dated December 17, 2008

LINDA LINGLE
GOVERNOR OF HAWAII



STATE OF HAWAII
DEPARTMENT OF LAND AND NATURAL RESOURCES

STATE HISTORIC PRESERVATION DIVISION
601 KAMOKILA BOULEVARD, ROOM 555
KAPOLEI, HAWAII 96707

LAURA H. THIELEN
CHAIRPERSON
BOARD OF LAND AND NATURAL RESOURCES
COMMISSION ON WATER RESOURCE MANAGEMENT

RUSSELL Y. TSUJI
FIRST DEPUTY

KEN C. KAWAHARA
DEPUTY DIRECTOR - WATER

AQUATIC RESOURCES
BOATING AND OCEAN RECREATION
BUREAU OF CONVEYANCES
COMMISSION ON WATER RESOURCE MANAGEMENT
CONSERVATION AND COASTAL LAMES
CONSERVATION AND RESOURCES ENFORCEMENT
ENGINEERING
FORESTRY AND WILDLIFE
HISTORIC PRESERVATION
KAIROKAWA ISLAND RESERVE COMMISSION
LAND
STATE PARKS

December 17, 2008

Robert B. Rechtman, Ph. D.
Rechtman Consulting, LLC
507-A East Lanikaula Street
Hilo, Hawai'i 96720

LOG NO: 2008.4968
DOC NO: 0812TD10

Dear Dr. Rechtman:

Subject: **Chapter 6E-42 Historic Preservation Review –
Revised Archaeological Inventory Survey Update, 'O'oma Beachside Village
'O'oma 2nd Ahupua'a, North Kona District, Island of Hawai'i
TMK: (3) 7-3-09: 04 & 22**

Thank you for submitted the revised report entitled *Archaeological Inventory Survey Update for the 'O'oma Beachside Village Project Area [TMK 3-7-3-090:004 and 022], 'O'oma 2nd Ahupua'a, North Kona District, Island of Hawai'i, RC-0445 (R.B. Rechtman, June 2007, Revised October 2008)*

The revised report fully addresses questions raised in our letter to you dated July 3, 2008 (Log No. 2008.1211, Doc No. 0807TD02). The revised report provides an expanded cultural-historical background discussion, updated descriptive information, and significance assessments and recommended treatment for seventeen historic properties. Two of the seventeen sites discussed were newly identified during the update fieldwork; the remaining sites were described in the 1987 inventory survey of the project area (PIIR).

The significance assessments and recommended treatment (preservation) for ten of the seventeen historic properties were previously approved by our office (SIHP Sites 50-10-27-2, 1910, 1911, 1912, 1913, 10155, 10181, 10827, 19773 and 18775). Two sites previously recommended for data recovery, and approved by our office, were re-evaluated and found to be outside the project area (Site 18774), and of modern derivation (Site 18831). We concur with the revised recommended treatment of no further work for these two sites, and with the revised significance assessment (not significant) for Site 18831. Three sites previously recommended for data recovery are given a revised recommendation of preservation (Sites 18808, 18821 and 18822). We concur with this revised recommended treatment and note that the previously approved significance assessments for these three sites were not changed in your report.

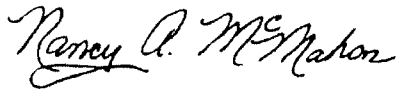
The two newly identified sites (25932 and 26678) are assessed as significant under HAR Criteria "d" (likely to yield information important to research on prehistory), and "e" (important cultural value to Native Hawaiian people). Both of these lava tube sites contain human burials and are recommended for preservation. We concur with the significance assessments for these newly identified sites; and because they were identified during inventory survey updating, their status will be determined by the Hawai'i Island Burial Council (HIBC). The HIBC will also make a determination for Site 18773, a burial identified during the 1987 inventory survey of the property.

Robert Rechtman
Page 2

Additional plans and documents that will be needed for this project include a preservation plan (interim and long-term) for the twelve non-burial sites within the project area, a burial treatment plan for the three known burial sites, and a monitoring plan. As indicated in our July 3 letter, we concur with your recommendation that archaeological monitoring of mass grading activities occur. The monitoring plan should minimally include a specific discussion of the circumstances under which monitoring will occur, monitoring and notification procedures, and procedures to be followed in the event of inadvertent discovery of human skeletal remains and non-burial historic properties.

The revised inventory survey update is approved in accordance with HAR §13-276. Please send one hardcopy of the document, clearly marked FINAL, along with a copy of this review letter and a text-searchable PDF version on CD to the Kapolei SHPD office, attention of "SHPD Library". We look forward to receiving the mitigation plans for this project as described above. If you have any questions or wish to further discuss the conclusion of this letter, please contact Theresa Donham at (808) 933-7653.

Aloha,

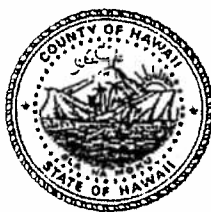


Nancy McMahon, Deputy SHPO/State Archaeologist
and Historic Preservation Manager
Historic Preservation Division

Petitioner's Exhibit 16

**Mayor H. Kim Letter
dated September 2, 2008**

Harry Kim
Mayor



Dixie Kaetsu
Managing Director

Barbara Kossow
Deputy Managing Director

County of Hawai'i

891 Ululani Street • Hilo, Hawai'i 96720 • (808) 961-8211 • Fax (808) 961-6553
KONA: 75-5706 Kuakini Highway, Suite 103 • Kailua-Kona, Hawai'i 96740
(808) 329-5226 • Fax (808) 326-5663

September 2, 2008

PBR HAWAI'I
ASB Tower, Suite 650
1001 Bishop Street
Honolulu, Hawai'i 96813

Attention: Tom Schnell

Subject: Support for 'O'oma Beachside Village

It is not often that I find myself in the position of writing to anyone in appreciation and support of a developer. From the beginning of our administration, it was recognized that there must be a change in mentality about development on this island. The most difficult part of this was to get developers to understand and accept that their development plans must embrace certain goals in the design of their project. The added difficulty of this was that in accepting these goals, it would not necessarily increase the profit or value added to the project.

The goals included:

- Development that reflects a welcome to all and not only to special groups.
- Energy efficient and sustainably designed neighborhoods meeting LEED-certified standards.
- Addressing and surpassing the requirements of affordable housing.
- Development to make available a true open space and welcome mat to the residents of Hawai'i Island, with special focus on coastal areas.
- Development that is consistent with what the community wants to see in the future, as set forth in the Kona Community Development Plan (CDP).

The willingness from the onset of 'O'oma to work with the County and the community in the development of this property was truly admirable and totally appreciated. I can honestly say that this developer has worked with the community to make sure the proposal is consistent with what is included in the Kona CDP. It was from 'O'oma that came forth the pledge to this community that the coastal area of 'O'oma's property will be developed in complete harmony and agreement that the ocean and its beaches belong to the people. It was 'O'oma that said publicly from the onset that the design will be in harmony with the neighbors of Kohanaiki, that the setback will far exceed any requirements, and that access and open space will be a

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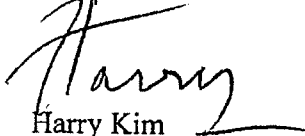
August 21, 2008
PBR Hawai'i
Page 2

chief focus of its coastal planning. It was 'O'oma that pledged the setback of 1,200 to 1,700 feet and a shoreline park.

In the commitment of the development of the 'O'oma property, perhaps the most appealing was the strong statement that it will truly reflect a place that people will feel welcome to enter. This will be because of the development of a people's place: a place where people live, play, work, and just visit.

In summary, the County has looked for developers who truly reflected an attitude of wanting to build something compatible with the community. I truly believe 'O'oma committed to that goal and has confirmed to work toward achieving that goal in the development of this property. The work is still in progress as this is written, and in every step of the way they have kept us informed as they continue to strive to achieve a development that will truly be a complement to the island rather than an infringement.

Aloha,


Harry Kim
MAYOR

Petitioner's Exhibit 17

List of Individuals Who Submitted Testimony to the Commission

**Individuals who Submitted Written Testimony to the Land Use Commission
in Docket No. A07-774 - North Kona Village, LLC
now known as 'O'oma Beachside Village LLC**

Name/Agency	Date of Testimony
Aaron Stene	04-12-07
Andrea Alden, Esq.	04-12-07
Bill Mulesky	05-31-07
Carol Fuller	04-11-07
Catherine "Casey" Delo Santos	04-09-07
Chad Kamaukala Campbell	04-12-07
Charles Flaherty	04-12-07
Cory (Martha) Harden	04-11-07
Daisy Mitchell	06-04-07
Daniel Texeira	06-04-07
David Kimo Frankel	04-09-07
Debbie Chang/ Island Transitions LLC	06-05-07
Debby Datkowitz	04-12-07
Debbie Hecht	01-06-09
Douglas Blake and Dianne Zink	04-11-07
Duane D. Erway/ Plan to Protect Kona	04-11-07; 01-07-09
Edward J. Sariol	06-04-07
Gary T. Morphis	06-04-07
Gene & Susan Dursin	04-13-07
George Broderson	04-09-07
Geraldine K. Bell, US NPS	04-12-07; 01-18-09
Gerri Ann Chai	05-30-07
Grace K.M. Horowitz	04-10-07
James P. Texeira	06-06-07
James Sogi	04-11-07
Jane Bockus	04-11-07
Janice Palma-Glennie/ Sierra Club	04-11-07; 01-04-09
Jean Bevanmarquez	06-05-07
Josh Green, M.D./ House of Representatives	04-09-07
Kalei Rapoza	04-11-07
Karlo Elias	06-06-07
Keli Campbell	04-11-07
Kerry S. Alligood	04-12-07
Kimo P. Chai	05-31-07

Name/Agency	Date of Testimony
Kinney Soares	06-00-07
Kraig A. Lee	06-04-07
Leland Adarna	06-04-07
Matthew Texeira	06-04-07
Micah Kawamoto	06-04-07
Nelson H. Hanohano	06-06-07
Peter Hain	04-12-07
Phyllis Hanson	04-11-07
Randy Domingo	06-00-07
Randy Rugar, Ph.D.	04-12-07
Richard Bennet/ Surfrider Foundation	01-07-09
Robinson Reyes, Jr.	06-07-07
Ronald Mitchell	05-30-07
Shannon Rudolph	04-12-07
Stone Wolfson	04-19-07
Susan Decker	04-12-07
Thomas E. Flores	06-04-07
Tom Carey	04-12-07
Vance Texeira	06-06-07
Virginia Isabel	01-08-09
Warryn K. Adarna	06-06-07